LIBRARY
SUPREME COURT U. S.

Office-Supreme Court, U.S.
FILED
FEB 8 1968
JOHN F. DAVIS, CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1967

No. 740

BRENDA K. MONROE, ET AL.,
PETITIONERS,

—v.—

BOARD OF COMMISSIONERS OF THE CITY
OF JACKSON, TENNESSEE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 19, 1967
CERTIORARI GRANTED JANUARY 15, 1968

INDEX

	PAGE
Relevant Docket Entries	1a
Complaint (Filed January 8, 1963)	3a
Answer of Board of Commissioners of Jackson, Tenn. (Filed February 26, 1963)	23a
Order Granting Summary Judgment (Filed June 19, 1963)	27a
City of Jackson School Desegregation Plan (Filed July 19, 1963)	29a
Memorandum Opinion of the United States District Court for the Western District of Tennessee (Filed August 12, 1963)	33a
Judgment (Filed August 20, 1963)	42a
Addendum to Memorandum Opinion (Filed October 9, 1963)	45a
Motion for Further Relief and to Add Parties, etc.	51a
Exhibit "K" Annexed to Foregoing Motion—Affidavit of Thomas B. Davis	67a
Exhibit "L" Annexed to Foregoing Motion—Affidavit of Mrs. Freddie Moore	69a
Exhibit "M" Annexed to Foregoing Motion—Affidavit of Mrs. Carl Brown	71a
Exhibit "N" Annexed to Foregoing Motion—Affidavit of Mrs. Annie L. Merriweather	73a

PAGE

Replication of Defendants to "Motion for Further Relief" 75a

Pre-Trial Order 92a

Supplemental Replication to Motion of September 4, 1964 ..... 94a

Petition 104a

Exhibit A Annexed to Petition—Map of Jackson, Tennessee 105a

Specification of Objections Filed by Plaintiffs, etc. 106a

Additional Motion for Further Relief, etc. 109a

Replication of Defendant to Additional Motion for Further Relief 115a

Exhibit A Annexed to Foregoing Replication—The 1965-66 School Calendar 124a

Excerpts From Transcript of Testimony 126a

Memorandum Decision by U.S.D.C., W.D. Tenn. 365a

Order of U.S.D.C., W.D. Tenn. 390a

Opinion of U.S.C.A., 6 Cir. 397a

Judgment of U.S.C.A., 6 Cir. 410a

Order of Supreme Court of United States Granting Certiorari 411a

TESTIMONY:

PAGE

Plaintiffs' Witnesses:

Roger W. Bardwell—
Direct 207a
Cross 222a
Redirect 238a

Albert Porter—
Direct 240a
Cross 245a, 343a
Redirect 350a

Merle G. Herman—
Direct 246a
Cross 262a
Redirect 293a
Recross 303a

Dr. Eugene Weinstein—
Direct 310a
Cross 322a
Redirect 339a
Recross 339a

Defendants' Witnesses:

C. J. Huckaba—
Direct 126a
Cross 144a

EXHIBITS:

	Offered Page	Printed Page
Plaintiffs' Exhibits:		
12—School Zone Maps	152a	*
12 to 21—School Zone Maps and Documents	211a	*
20—Enrollment Lists	242a	*
23—Statement of Expenses	301a	*
24—Letter dated June 15, 1965	302a	*
25—Telegram	303a	*
26—Enrollment Lists	308a	359a
Defendants' Exhibits:		
1 to 9—Maps	127a	*
10 to 11—Maps	142a	*

* Omitted.

Relevant Docket Entries

1964

9–4 Filed Motion for further relief and to add parties as additional and/or intervening plaintiffs with Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M & N.

9–14 Filed Replication of defendants to Sept. 3, 1964— "Motion for Further Relief" filed against them.

9–28 Filed Pre-trial Order.

11–13 Filed Supplemental Replication to Motion of Sept. 4, 1964 filed against defendants.

11–13 Filed Petition of defendants, Board of Commissioners, City of Jackson, et al. with proposed plan for unitary non-racial zones for Junior High School system of City of Jackson to be effective beginning 1965-66 school year with plan (Exhibit A) attached.

11–30 Filed Specification of Objections filed by plaintiffs to plan for unitary non-racial zones for Junior High School system of City of Jackson filed by defendants.

1965

4–19 Filed additional Motion for Further Relief against defendants Board of Education, City of Jackson and C. J. Huckaba, City School Supt.

5–18 Filed Replication & Exhibits of City of Jackson to defendants additional Motion for Further Relief.

1965

7–30 Filed Memorandum Decision of Court relative to City Schools.

Relevant Docket Entries

1965

8–11 Filed Order on Memorandum Decision relative to City Schools.

9–7 Filed Notice of Appeal from Judgment entered Aug. 11, 1965—relating to City of Jackson Schools.

1966

2–14 Filed Court Reporter's Transcript of Proceedings.

Complaint

(Filed January 8, 1963)

1. (a) The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331, as this action arises under the Fourteenth Amendment to the Constitution of the United States, Section 1, and Title 42, United States Code, Section 1981. The matter in controversy, exclusive of interest and costs, exceeds the sum or value of Ten Thousand ($10,000.00) Dollars.

(b) The jurisdiction of this Court is further invoked under Title 28, United States Code, Section 1343, in that:

This action is authorized by Title 42, United States Code, Section 1983, to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation, under color of state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by the Fourteenth Amendment, Section 1, of the Constitution of the United States and secured by Title 42, United States Code, Section 1981, providing for the equal rights of citizens and of all persons within the jurisdiction of the United States.

2. This action is a proceeding under Title 28, United States Code, Sections 2201 and 2202 for a judgment declaring the rights and other legal relations of plaintiffs and all other persons, similarly situated, eligible to attend public schools owned, maintained and operated by the City Board of Education or School Commissioners of the City of Jackson, Tennessee and/or the County Board of Education of Madison County, Tennessee, in and for said City, County and State, and demanding an injunction, for the

purpose of determining and redressing questions and matters of actual controversy between the parties, to wit:

(a) Whether the custom, policy, practice or usage of the defendants in excluding plaintiffs and other persons, similarly situated, from public schools owned, maintained and operated by the City Board of Education or School Commissioners of Jackson, Tennessee and by the County Board of Education of Madison County, Tennessee, in and for said City of Jackson and County of Madison, State of Tennessee, and in requiring Negro school children residing in said City and County, to attend racially segregated schools operated by said City or County Boards of Education, or any other agency, public or private, solely because of their race or color, and in operating compulsory racially segregated school systems in and for said City of Jackson and County of Madison, pursuant to Sections 49-3701, 49-3702 and 49-3703, (Tennessee Code Annotated, 1955), and that portion of Section 12 of Article 11 of the Tennessee Constitution which makes it unlawful for white and colored persons to attend the same school, and pursuant to any other law, custom, policy, practice, or usage, violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States.

3. Plaintiffs bring this action pursuant to Rule 23, (a) (3) of the Federal Rules of Civil Procedure as a class action for themselves and on behalf of all other persons similarly situated, who are so numerous as to make it impracticable to bring them all before the Court, and who seek a common relief based upon common questions of law and fact.

4. Plaintiffs are Negroes and are citizens of the United States and of the City of Jackson, County of Madison and State of Tennessee. All adult plaintiffs are parents and/or guardians of the infant plaintiffs, and reside with the infant plaintiffs in the City of Jackson, and within the County of Madison, State of Tennessee. The infant plaintiffs are school children, eligible to attend the public schools of the City of Jackson and County of Madison, State of Tennessee, and have been attending said schools and can satisfy all requirements for admission to the public schools maintained and operated by the defendant, City Board of Education or School Commissioners of the City of Jackson, Tennessee in and for said City, and by the defendant, County Board of Education of Madison County, Tennessee in and for said County, including the schools to which they respectively applied as hereinafter shown.

5. (a) The defendant, Board of Commissioners of the City of Jackson, Tennessee constitutes the City Board of Education or School Commissioners of said City and is composed of the following Board Members or Commissioners: the defendants, Quinton D. Edmonds, R. L. Patey and R. E. Bailey, who together comprise the Board of Commissioners of Jackson, Tennessee constituting the City Board of Education or School Commissioners of said City and who are hereinbefore and hereinafter referred to as defendant, City Board of Education.

(b) The defendant, County Board of Education of Madison County, Tennessee is composed of the following Board Members: The defendants, R. E. Rooks, L. T. Greer, J. D. Lillard, Neil Smith, R. D. Pearson, Jimmy C. Bond, and Taylor Robinson, who together constitute the County Board

of Education of Madison County, Tennessee and who are hereinafter referred to as defendant, County Board of Education.

(c) Both of said defendants, City Board of Education and County Board of Education, exist pursuant to the Constitution and laws of the State of Tennessee as administrative departments or agencies of the State of Tennessee, discharging governmental functions and are by law, bodies corporate or continuous bodies or entities, and are being sued herein as such corporate or continuous bodies or entities.

(d) All of said defendants, above named as Board Members or Commissioners of the defendant, City Board of Education, and as Board Members of the defendant, County Board of Education, are citizens and residents of the State of Tennessee, and are being sued herein in their official capacities as such Board Members or Commissioners, and also are being sued herein as individuals.

(e) Defendant, C. J. Huckaba, is Superintendent of the City Schools of Jackson, Tennessee, and defendant, James L. Walker, is Superintendent of the Public Schools of Madison County, Tennessee. Both of said defendants hold office pursuant to the Constitution and laws of the State of Tennessee as administrative officers of the free public school systems of Tennessee. They are citizens and residents of the State of Tennessee and are made defendants herein and sued in their respective official capacities as stated hereinabove and also are being sued herein respectively as individuals.

6. The State of Tennessee has declared public education a State function. The Constitution of Tennessee, Article 11, Section 12, provides:

> "Knowledge, learning, and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the State being highly conducive to the promotion of this end, it shall be the duty of the General Assembly, in all future periods of this Government, to cherish literature and science."

Pursuant to this mandate the Legislature of Tennessee has established a uniform system of free public education in the State of Tennessee according to a plan set out in the Tennessee Code Annotated, 1955, Sections 49-101 through 49-3806, and supplements and amendments thereto. The establishment, maintenance and administration of the public school system of Tennessee is vested in a Commissioner of Education, a State Board of Education, County Superintendents of Public Schools, and County and City Boards of Education.

7. The public schools of the City of Jackson, Tennessee are under control and supervision of defendant, City Board of Education, and defendant, C. J. Huckaba, acting as an administrative department, division or agency, and as an agent of the State of Tennessee. The public schools of Madison County, Tennessee, are under the control and supervision of defendant, County Board of Education and defendant, James L. Walker, acting as an administrative department, division or agency and as an agent of the

State of Tennessee. Said City and County Boards of Education are respectively charged and vested with the administration, management, government, supervision, control and conduct of public schools within said City of Jackson and County of Madison, respectively, and are vested with all powers and duties pertaining to, connected with, or in any manner incident to the proper conduct and control of the public schools of said City and County, respectively. Said City and County Boards of Education are under a duty to enforce the school laws of the State of Tennessee, to maintain efficient public school systems in the City of Jackson and in Madison County, Tennessee, respectively; to determine the studies to be pursued, the methods of teaching, and to establish such schools as may be necessary for the completeness and efficiency of said respective school systems. Defendant, C. J. Huckaba, as Superintendent of Jackson City Schools, and defendant, James L. Walker, as Superintendent of the Madison County Schools, respectively, have the immediate control of the operation of the public schools of said City and County, and are the respective administrative agents for the defendants, City Board of Education and County Board of Education.

8. Plaintiffs allege that the defendant, City Board of Education and its Superintendent, C. J. Huckaba, acting under color of the laws of the State of Tennessee and County of Madison, have pursued and are presently pursuing a policy, custom, practice and usage of operating a compulsory racially segregated school system in and for the City of Jackson, Tennessee. Likewise the defendant, County Board of Education and its Superintendent,

James L. Walker, acting under color of the laws of the State of Tennessee and County of Madison, also have pursued and are presently pursuing a policy of operating a compulsory racially segregated school system in and for the County of Madison, State of Tennessee. The racially segregated school systems respectively operated by defendants, consist of "primary" systems of public schools limited to and/or designated for attendance by white children residing within the boundaries of said City of Jackson, and/or the County of Madison, respectively. Said schools are staffed by white teachers, white principals and white sustaining personnel. Said "white" schools are located in various parts of the City of Jackson and Madison County, respectively, and regardless of location, these schools are and have been designed as "white" schools and, with certain exceptions hereinafter mentioned, may be attended by white children only. Likewise said defendants, City Board of Education and County Board of Education, respectively maintain "secondary" systems of "colored" or "Negro" schools designated as such by defendants, and limited to attendance by Negro children. These school systems are respectively staffed by entirely Negro personnel; the teachers are all Negroes, the principals and all sustaining personnel are Negroes. These schools, regardless of location, are limited to attendance by Negro children. These compulsory racially segregated school systems operated respectively by the defendants, City Board of Education and County Board of Education are based solely upon race and color; attendance at the various schools is solely based on race and color and the assignment of personnel is determined solely upon the race and color of the children attending the particular school and the race and color of the personnel to be as-

signed. Plaintiffs are informed and believe and therefore aver upon said information and belief that the defendants have not maintained geographical zone lines. However, the schools in said "Negro" and "white" systems are and have been designated and maintained by defendants exclusively on the basis of race and color and assignments of students to these schools are and have been made by the defendants on the basis of the designation and past use of a school as a "Negro" or "white" school and the race or color of the pupil to be assigned, all white children being mandatorily assigned to the "white" schools and all Negro children being mandatorily assigned to the "Negro" schools. For many years, both the defendants, City Board of Education and County Board of Education, have respectively adopted, maintained and enforced and they still are respectively maintaining and enforcing this custom, policy, practice or usage of compulsory racially segregated systems in the schools of said City and County over which said defendants respectively have jurisdiction and control, pursuant to which they have required and are still requiring all Negro children, including the infant plaintiffs, to be assigned to said schools designated exclusively for Negro children.

9. From time to time since 1954 or 1955, Negro citizens and residents of the City of Jackson and County of Madison have requested the defendants to cease operating said compulsory racially segregated public school systems in and for the City of Jackson and County of Madison, State of Tennessee, and to comply with the decision of the Supreme Court of the United States in the Segregation Cases; and also for several years defendants have been fully aware of their affirmative duty under the decisions of said

Court to desegregate all public facilities under their jurisdiction and control. Defendants have continued, however, to operate said compulsory racially segregated public school systems in said City and County and have failed and refused to formulate or adopt any plan for desegregating same.

10. In August, 1961 several Negro children residing in Jackson, Tennessee made application to the defendant, City Board of Education, for admission to "white" schools. Said defendant treated these as applications for transfer, and in January, 1962, granted the applications of three of said Negro children for "transfer" to a single "white" school, simultaneously issuing the following official statement which was published in the Jackson Sun, a local newspaper, on the 25th day of January, 1962:

> "In compliance with the decree of the United States Supreme Court in the case of Brown vs. School Board, and the decrees of the United States District Court for the Western District of Tennessee, interpreting and implementing the decree of the Supreme Court in the Brown case, the Board of Commissioners (school board) of the City of Jackson, Tennessee, by unanimous decision pursuant to Tennessee's Pupil Placement Act, approves these applications effective today."

Thereafter said defendant continued and still continues to treat all applications of Negro school children for admission to "white" schools as applications for "transfer" under the Tennessee Pupil Assignment Law (Tennessee Code Annotated, 1955, Section 49-1741, et seq.), and of the many such applications it has received, it has permitted only four additional Negro school children to be enrolled in its

said "white" schools as of the current date. No white school children in the City of Jackson or County of Madison are or have ever been enrolled in any of the "Negro" schools of said City or County, and the schools of both of said school systems continue to be operated by defendants on the basis of "white schools" for white children and "Negro schools" for Negro children.

In June, 1962, the infant plaintiff, Brenda Kay Monroe, through her parents, made written application to the defendant, City Board of Education, to be admitted to Jackson Senior High School, a "white" school operated by said defendant, for the school year 1962-63 beginning in August, 1962. In July, 1962, the infant plaintiff, Harold Dwayne Walker, made application to said defendant, City Board of Education, to be admitted to the Alexander Elementary School, a "white" school operated by said defendant, for the 1962-63 school year beginning in August, 1962. Said infant plaintiffs pursued the administrative remedies provided under the Tennessee Pupil Assignment Law, but their said applications were denied by defendants solely on account of their race or color.

Plaintiffs aver that the aforesaid action, or any other action of defendants in attempting to adopt or apply the Tennessee Pupil Assignment Law as a plan of desegregation, is invalid and does not comply with the requirement of the Fourteenth Amendment to the Constitution of the United States in that said law is not and does not purport to be a plan of desegregation, and is inadequate as a plan for reorganizing the public schools into a nonracial system; nor does said law afford an adequate administrative remedy for plaintiffs, in view of defendants' continuing policy, practice, custom and usage of racial segregation and

their failure and refusal to reorganize said school systems on a nonracial basis.

11. At the beginning of the school term, i.e., to-wit: in August, 1962, the infant plaintiff, Brenda Kay Monroe, presented herself with her father and made proper and timely application for admission to said Jackson Senior High School, but was denied admission to said school by defendants, solely on account of her race or color. On the same day, the infant plaintiffs, Harold Dwayne Walker and George Stephanie Springfield, presented themselves together with some of their parents and made proper and timely applications for admission to the Alexander Elementary School. Both of said plaintiffs were refused and denied admission by defendants to the said Alexander Elementary School, solely on account of plaintiffs' race or color. All of said infant plaintiffs reside in close proximity to the respective schools to which they applied and would have been admitted had they been white children. The plainitffs, Brenda Kay Monroe and Harold Dwayne Walker, live much nearer to said schools to which they applied than to the "Negro" schools which they are and have been required by the defendants to attend. The infant plaintiff, Georgia Stephanie Springfield, had not attended school in the past, but was entering the first grade, and lives much nearer to Alexander Elementary School than to the "Negro" school which defendant, City Board, requires her to attend. The plaintiffs, Kenneth A. Martin and wife, Eva M. Martin, and their child, the infant plaintiff, Maria Bonita Martin, are presently residing near a school designated by the defendants as a "Negro" school; however, they join in this action for the reason that said infant plaintiff, Maria Bonita Martin, as well as other persons similarly situated,

are being denied their rights to enjoy a non-discriminatory public education by reason of the compulsory racially segregated public school systems which the defendants are maintaining and operating in and for the City of Jackson and County of Madison, State of Tennessee, as more fully shown hereinafter.

(a) Defendants' requirement of compulsory racial segregation imposes unreasonable burdens upon the infant plaintiffs and other Negro school children similarly situated who live near schools which white children living in the same area are permitted to attend, but plaintiffs and all other Negro children are refused assignment to these "white" schools and required to travel greater distances to "Negro" schools, solely because of their race or color.

(b) Plaintiffs aver that while some of them sought and seek admission of their children to the respective schools to which they applied as aforesaid, same being the schools of their choice and nearer to their homes, all of the plaintiffs further insist that the operation of said compulsory racially segregated school systems in the City of Jackson and in the County of Madison violates rights of the plaintiffs and members of their class which are secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Federal Constitution. The compulsory racially segregated school system is predicated on the theory that Negroes are inherently inferior to white persons and, consequently, may not attend the same public schools attended by white children, who are superior. The plaintiffs, and members of their class, are injured by the policy of assigning teachers, principals and other school personnel on the basis of the race and color of the children attending a particular school and the race and color of

the person to be assigned. Assignment of school personnel on the basis of race and color is also predicated on the theory that Negro teachers, Negro principals and other Negro school personnel are inferior to white teachers, principals and other white school personnel and, therefore, may not teach or serve white children. Thus all of the plaintiffs are affected and injured by defendants' aforesaid policy, practice, custom or usage, whether they are thereby excluded from a white school nearer their homes, or whether, on the other hand, they are required to attend a school nearer their homes but which is designated and stigmatized as a "Negro" school, from which all children of other racial extractions are excluded.

(c) Plaintiffs further aver that, while the "white" schools owned, maintained and operated by the defendants, City Board of Education and County Board of Education, are in general, modern, well-equipped and well-staffed, with adequate facilitie of all kinds and with broad, up-to-date curricula, textbooks and programs designed to afford their students a good education, plaintiffs are informed and believe, and aver upon said information and belief, that most of the "Negro" schools in both of said school systems, including the "Negro" City schools which the infant plaintiffs have been attending, are substandard, under or inadequately staffed, and poorly equipped, with lacking or inadequate library, cafeteria and health facilities, and with inadequate or outdated academic facilities, textbooks and other training aids which are frequently handed down to them after being discarded in the "primary" systems of "white" schools operated by defendants. Said City and County School Systems are closely related and interdependent insofar as the rights which plaintiffs here seek to

redress are concerned, as illustrated by the fact that all school children residing in the City of Jackson may apply and be admitted freely to the schools operated by said County Board of Education, except that said County Board likewise enforces racial segregation in said County Schools, limiting admission of Negro children to "Negro schools" therein. In addition, administrative tranfers have been rather freely permitted by defendants Boards of Education between said City and County School Systems, so long as this could be done without affecting said defendants' mutual policies and practices of racial segregation in the two school systems. Said County Board of Education operates the only High School in Madison County offering certain technical or vocational courses vital to adequate preparation of children with aptitudes for sciences and technology in a modern age, and "white" children residing in the City of Jackson as well as the County of Madison are freely admitted to this as well as other County "white" schools, but Negro school children of both the City and County are denied this right, but are permitted by defendants to attend only the "Negro" County Schools. Said County Schools are supported by public funds partially obtained through taxation of residents of the City of Jackson, including the plaintiffs and other members of their class.

12. The defendants apparently rely on the following provisions of the Tennessee Constitution and Statutes, which read as follows:

Constitution of 1870, Art. 11, Sec. 12:

"... No school established or aided under this section shall allow white and negro children to be received as scholars together in the same school. ..."

Tennessee Code, 1955, Sections:

"49-3701. Interracial Schools prohibited.—It shall be unlawful for any school, academy, college, or other place of learning to allow white and colored persons to attend the same school, academy, college, or other place of learning.

"49-3702. Teaching of mixed classes prohibited.—It shall be unlawful for any teacher, professor, or educator in any college, academy, or school of learning, to allow the white and colored races to attend the same school, or for any teacher or educator, or other person to instruct or teach both white and colored races in the same class, school, or college building, or in any other place or places of learning, or allow or permit the same to be done with their knowledge, consent or procurement.

"49-3703. Penalty for violations.—Any person violating any of the provisions of this chapter, shall be guilty of a misdemeanor, and, upon conviction, shall be fined for each offense fifty dollars ($50.00), and imprisonment not less than thirty (30) days nor more than six (6) months."

13. The infant plaintiffs and all other person similarly situated, in the City of Jackson and County of Madison, State of Tennessee, are thereby deprived of their rights guaranteed by the Constitution and laws of the United States.

Plaintiffs aver that the said constitutional and statutory provisions and all other laws, customs, policies, practices and usages of the State of Tennessee requiring or permitting segregation of the races in public education, fall with-

in the prohibited group which the Supreme Court of the United States holds must yield to the Fourteenth Amendment of the Constitution of the United States, and are of no force and effect.

Plaintiffs therefore aver that the said custom, policy, practice or usage of defendants in excluding plaintiffs and other persons, similarly situated, from public schools owned, maintained and operated by the defendants, City Board of Education and County Board of Education, in the City of Jackson and County of Madison, State of Tennessee, solely because of plaintiffs' race or color, and in operating said compulsory racially segregated public school systems in and for said City and County, pursuant to said constitutional and statutory provisions and any other law, custom, policy, practice or usage of the State of Tennessee requiring or permitting segregation of the Negro and white races in public education, deprives plaintiffs and all others similarly situated of the equal protection of the laws and of due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, and is therefore unconstitutional and void and affords defendants no legal excuse to deprive plaintiffs of their rights herein prayed.

14. Plaintiffs and those similarly situated and affected, on whose behalf this suit is brought, are suffering irreparable injury and are threatened with irreparable injury in the future by reason of the acts herein complained of. They have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of, other than this suit for a declaration of rights and an injunction. Any other remedy to which plaintiffs and those similarly situated, could be remitted would be attended

by such uncertainties and delays as to deny substantial relief, would involve multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience, not only to the plaintiffs and those similarly situated, but to defendants as governmental agencies.

Plaintiffs are informed and believe, and aver upon said information and belief, that although classes for the Spring Semester, 1963 begin in the Negro schools of said City and County on or about 14 January 1963, similar classes in the "white" schools of said City and County do not begin until 21 January 1963. As aforesaid, plaintiffs requested admission to the public schools of said City and County on a racially nondiscriminatory basis several months ago, and both defendants, City and County Boards of Education, are or should have been aware for many years of their duty to initiate and make known to school patrons a plan or plans for desegregation of said school systems. Notwithstanding their knowledge of this duty, they have not done so, and there is no reason why, in view of the foregoing circumstances, the said infant plaintiffs and other Negro school children, similarly situated, should not be admitted to the public schools of said City and County on a nondiscriminatory basis at once. The infant plaintiff, Georgia Stephanie Springfield, entered public school for the first time in August, 1962 and theretofore had not been subjected to the inherent evil of racially segregated education. Plaintiffs further aver that they and other Negro school children, similarly situated, will suffer irreparable injury in the future unless defendants are restrained by the temporary restraining order and injunction of this Court for the reasons set out hereinabove, and also for the reason that the defendants very apparently intend to continue their said policies and prac-

tices of compulsory racial segregation; and if the plaintiffs and other Negro children similarly situated, are not granted immediate relief now, they will continue to be subjected to the inherent evil and inequality of said racial segregation in the public schools for an indefinite period of time, resulting in immediate and lasting harm and damage not only to them, but also to white children who are thereby being indoctrinated daily with concepts of themselves as a master or superior race, while infant plaintiffs will continue to be subjected daily to the said indoctrination classifying them as an inferior race.

15. There is between the parties an actual controversy as hereinbefore set forth.

WHEREFORE, PLAINTIFFS respectfully pray:

The Court issue forthwith a temporary restraining order and/or a preliminary injunction against the defendants, immediately restraining and enjoining them and each of them, their agents, employees, servants or attorneys, from refusing to admit the infant plaintiffs and other persons similarly situated, to the Jackson Senior High School and Alexander Elementary School, or any other public school, institution or facility operated by defendant, City Board of Education, or by defendant, County Board of Education, in and for the City of Jackson and County of Madison, State of Tennessee, because of plaintiffs' race or color, pending further orders of the Court.

The Court adjudge, decree and declare the rights and legal relations of the parties to the subject matter here in controversy in order that such declaration shall have the force and effect of a final judgment or decree.

The Court enter a judgment or decree declaring that the custom, policy, practice or usage of defendants in maintaining and/or operating compulsory racially segregated public school systems in and for the City of Jackson and the County of Madison, State of Tennessee, and in excluding plaintiffs and other persons similarly situated, from the Jackson Senior High School and Alexander Elementary School, or any other public schools, institutions or facilities maintained and/or operated by defendants, City Board of Education and County Board of Education, solely because of race or color, pursuant to the above quoted portions of Article 11, Section 12 of the Constitution of Tennessee, Sections 49-3701, 49-3702 and 49-3703 of the Tennessee Code Annotated, 1955, and any other law, custom, policy, practice and usage, violates the Fourteenth Amendment of the Constitution of the United States, and is therefore unconstitutional and void.

The Court issue a permanent injunction forever restraining and enjoining defendants and each of them, their agents, employees, servants or attorneys, from maintaining and/or operating compulsory racially segregated systems of public schools, institutions or facilities for education in and for the City of Jackson and County of Madison, State of Tennessee, and from refusing to admit plaintiffs and other persons similarly situated to said Jackson Senior High School, Alexander Elementary School, or any other public schools, institutions or facilities operated by defendants, City Board of Education and County Board of Education, in and for the said City and County, because of plaintiffs' race or color.

In addition to the immediate and preliminary relief prayed hereinabove in behalf of the named infant plaintiffs and other persons similarly situated, the plaintiffs

pray that this Court also expeditiously issue a preliminary and/or permanent injunction directing defendants, City and County Boards of Education, either to reorganize immediately, or in the alternative to present to the Court at an early date a complete plan for the prompt and speedy reorganization of the entire systems of public schools, institutions and facilities within their respective jurisdiction and under their control, into unitary, nonracial systems of schools, institutions and facilities, which shall include a plan for the assignment, education and treatment of students or enrollees on a nonracial basis, the assignment and treatment of teachers, principals, staff and other school, institutional, educational or other sustaining personnel on a nonracial basis, the construction and use of all plant or other facilities and the approval of budgets on a nonracial basis, operation of the school transportation system on a nonracial basis, and the elimination of all and any other discriminations in said systems and in the operation and use of schools, institutions, facilities, curricula or programs of any nature whatsoever in said City and County School Systems, which are based upon race or color. Plaintiffs pray that if this Court directs defendants to present such desegregation plans, that this Court will retain jurisdiction of this case pending Court approval and full and complete implementation of defendants' plans.

Plaintiffs further pray that the Court will allow them their costs herein and such further, other or additional relief as may appear to the Court to be equitable and just.

Answer of Board of Commissioners of City of Jackson, Tenn.

(Filed February 26, 1963)

Come the defendants, Board of Commissioners of the City of Jackson, Tennessee, constituting the Board of Education or School Commissioners of said City, and Quinton D. Edmonds, R. L. Patey, and R. E. Bailey, Board Members or Commissioners, who together as such comprise the Board of Commissioners of the City of Jackson, Tennessee, constituting the Board of Education or School Commissioners of said City, and C. J. Huckaba, City School Superintendent and/or Superintendent of Public Instruction of the City of Jackson, Tennessee, and for their answer to the complaint filed hereto against them and other defendants, respectfully show to the Court:

I

Said defendants admit that the jurisdiction of the District Court of the United States for the Western District of Tennessee, Eastern Division, in which Court the complaint filed herein is pending, is properly invoked under the provisions of Title 28, United States Code, Sec. 1343; that this is a proper action authorized by Title 42, United States Code, Sec. 1983 and Title 28, United States Code, Sec. 2201 and 2202 on the part of original plaintiffs, and others similarly situated, under Rule 23 of the Federal Rules of Civil Procedure.

II

Said defendants admit the status of the original plaintiffs as set forth in the complaint; admit that they are the public school board members and the superintendent of the

public school system of Jackson, Tennessee, as alleged, and as such control and operate the public schools in and for the City of Jackson, Tennessee. They deny that they exercise or have the right to exercise any control over the public schools of Madison County outside the City of Jackson, Tennessee, and deny that the Madison County and City of Jackson school systems are interrelated, or interdependent.

III

Said defendants admit that the original plaintiffs have a right to attend a racially desegregated public school within the City of Jackson, Tennessee.

Defendants deny that they have operated a compulsory bi-racial school system in Jackson, Tennessee since the 1961-1962 school term when three negro pupils were voluntarily admitted to Tigrett Junion High School (formerly attended by white pupils only) on their individual applications for transfer and enrollment pursuant to the Provisions of Tennessee's Pupil Placement Act:

Defendants would show that beginning with the 1961-1962 school term the City of Jackson school system has been operated pursuant to the Provisions of Tennessee's Pupil Placement Act and the decision of the United States District Court for the Western District of Tennessee, in the case of Northcross, et al, vs. Board of Education of the Memphis City Schools, et al; that in addition to the three negro pupils admitted as aforesaid to Tigrett Junior High School during the 1961-1962 school term, four negro pupils were in like manner voluntarily admitted to Alexander Elementary School (formerly attended by white

pupils only) during the 1962-1963 school term. Since said 1961-1962 school term the City of Jackson school system has not been maintained as a racially segregated school system but rather defendants required that applications for transfer and enrollment in the school system be initiated by pupils on an individual basis and assignments be made under the Provisions of Tennessee's Pupil Placement Act. Accordingly, there has been no compulsory racial integration or segregation applied to pupils seeking a transfer and enrollment in a desegregated school except where applicants for transfer and enrollment were judged not to qualify for such transfer and enrollment pursuant to the Provisions and Requirements of Tennessee's Pupil Placement Act.

Defendants admit that "negro children cannot be required to apply for that to which they are entitled as a matter of right"; that they have a constitutional right to attend a racially desegregated school subject to non-racial qualifications; and that "the (Tennessee's) Pupil Assignment Law is not adequate as a plan for reorganizing the (City) schools into a non-racial system." (Quotations in the above paragraph are from the opinion of the United States Court of Appeals for the Sixth Circuit in the Case of Northcross, et al, vs. Board of Education of the Memphis City Schools, et al, decided March 23, 1962).

IV

Said defendants deny that schools attended by Negro pupils are substandard or in any way unequal to schools attended by white pupils; deny the alleged inferiority of Negro schools; and, on the contrary, defendants would

show that negro schools are equal and in some instances better than other schools and Negro teachers and school personnel are ably qualified for positions they hold.

Defendants would further respectfully show that equality of Negro and white schools, or the lack of equality is not material to the issue in this cause; that they are diligently seeking to resolve extreme administrative difficulties attendant on racially desegregating pupils in the public schools of the City of Jackson in such manner that maximum educational opportunities be provided and fostered for pupils on a non-racial basis under a wise and acceptable desegregation plan.

V

All allegations of the complaint not herein either specifically admitted or denied are here and now generally denied and denied as fully as though specifically denied herein.

And now having fully answered, these defendants pray to be hence dismissed.

/s/ William T. Diamond

William T. Diamond
Attorney for above-named defendants
211 National Bank of Commerce Building
Jackson, Tennessee

Order Granting Summary Judgment

(Filed June 19, 1963)

This cause was heard the 14th day of June, 1963, before the Honorable Bailey Brown, United States District Judge, upon the entire record, and especially upon the motion for summary judgment filed by the plaintiffs, the transcript of evidence heretofore introduced in this cause on 19 January 1963 and 15 February 1963 which has been filed as a part of the record, the brief filed by plaintiffs in support of said motion for summary judgment, and upon the statements, admissions and arguments by counsel for the respective parties, from a consideration of all of which the Court finds, holds, and DECREES as follows:

1. The motion of plaintiffs for summary judgment should be and the same is hereby granted; but the present relief awarded to plaintiffs will be in the form of a requirement that the defendants, City Board of Commissioners, etc., et al., and County Board of Education, etc., et al., file with the Court plans for desegregation of and elimination of racial discrimination in the respective school systems of the City of Jackson and County of Madison within the time and in the manner as provided hereinafter.

2. The defendants, City Board of Commissioners, etc., et al., will file with the Clerk of this Court not later than 20 July 1963 a complete plan for desegregation of and elimination of racial discrimination in the school system of the City of Jackson, Tennessee. The plaintiffs are allowed to and including 27 July 1963 within which to file specifications of objection, if any, to said desegregation plan; and a hearing will be held on said plan filed by the said City Board of Commissioners, before this Court in

Memphis, Tennessee, at 10:00 A.M. on Tuesday, 6 August 1963.

3. The defendants, County Board of Education, etc., et al., will file with the Clerk of this Court not later than 15 July 1963, a complete plan for desegregation of and elimination of racial discrimination in the school system of Madison County, Tennessee. The plaintiffs are allowed to and including 22 July 1963 within which to file specifications of objection, if any, to said desegregation plan, and a hearing will be held on said plan filed by the said County Board of Education, before this Court in Memphis, Tennessee, at 10:00 A.M. on Friday 26 July 1963.

City of Jackson School Desegregation Plan

(Filed July 19, 1963)

Pursuant to order of the Court entered June 19, 1963, the Board of Commissioners of The City of Jackson, Tennessee, file the following plan:

The Board of Commissioners (School Board) of the City of Jackson, having been ordered by the District Court of the United States, Western District of Tennessee, Eastern Division, to file a plan for the desegregation of the City Schools of the City of Jackson School System, does hereby submit a plan of desegregation.

The plan has the purpose of meeting the requirements of the order of this Court, of continuing to provide the best possible education to all students, and of securing to each individual student the best education within the capabilities of such student. This plan also will help preserve to some extent a degree of tranquility between the races within The City of Jackson.

1. Effective with the fall term of the 1963-64 school year, compulsory segregation of students by race within city schools is abolished for the first three grades within elementary schools. Effective with the fall term of the 1964-65 school year compulsory segregation of students by race within city schools is abolished for grades 4, 5 and 6 within elementary schools. Each year thereafter at the beginning of the fall term, compulsory segregation of students by race will progressively be abolished in the next higher grade in Junior High and then Senior High Schools. The Civil Technician Class will be opened to students of all races otherwise qualified beginning with 1963-64 school year under proper regulations to be established by the School Department.

City of Jackson School Desegregation Plan

2. The superintendent of Schools, with the advice and approval of the Board of Commissioners, shall immediately prepare non-racial geographical district boundaries for each school within the City School System and as compulsory segregation is abolished within the School System said boundaries shall be effective for those desegregated grades. These boundaries may from time to time be revised for a more efficient or economical use of City facilities or other appropriate cause that may occur.

3. As the grades are progressively desegregated, any student living within a district so created may, if otherwise eligible, attend the proper desegregated grade of the school within such district without regard to race.

4. Any student living within the City of Jackson enrolled in a City School for the 1962-63 school year may, if otherwise eligible, continue to attend the same school until graduation from, or completion of, such school, regardless of the district lines to be created as set out above. Any student living outside the corporate limits of The City of Jackson enrolled in a City School for 1962-63 year may, if otherwise eligible, attend a City School until further notice but only on condition that such student agree to accept assignment by the Superintendent of Schools to a school for the convenience of the City School System.

5. New students, otherwise eligible, living within the Corporate Limits of the City of Jackson entering the City Schools for the first time in a grade desegregated under this plan, may register at the school of their choice even

though such school may be outside the district area in which said student lives. The Superintendent will then make assignment on the basis of districts set up in accordance with paragraph 2. However, the Superintendent may, if sufficient facilities exist, at his option, assign said pupil to the school selected by the student. New students living outside the corporate limits of The City of Jackson desiring to enter a City School for the first time in a grade desegregated under this plan may, if otherwise eligible, attend city schools until further notice but only on condition that such student agree to accept assignment by Superintendent of Schools to a school for the convenience of the City School System.

6. (a) The Superintendent of Schools shall have the right to grant, or require, transfer in any individual case where necessary for obtaining maximum economy and efficiency of school facilities and personnel, considering, among other things, school capacity, class room capacity, central facilities capacity, teacher-pupil ratio, grade load, or for the accomplishment of any other purpose of this plan.

(b) The Superintendent shall further have the right to grant, or require, individual transfer where such transfer is necessary for the attainment of the best possible education by the individual.

(c) Any student may, for reasons satisfactory to such student and his or her parents, apply for a transfer to any other school in the City School System for which said student is otherwise eligible to attend and the Superintendent of Schools may, if sufficient space and other facili-

ties exist in the school to which the transfer is requested, grant such application at his option and as the best interest of the City School System may appear to the Superintendent of Schools. Transfer during a school semester however is discouraged and such transfers will be granted only because of unusual circumstances and for good causes shown.

(d) All assignments, transfers or re-location of pupils will be in accordance with the Tennessee Pupil Assignment Law and appropriate regulations of the School Department.

Memorandum Opinion of the United States District Court for the Western District of Tennessee

(Filed August 12, 1963)

This is a suit filed by certain minors and their parents, all Negroes, seeking desegregation of the public schools of the City of Jackson and Madison County, Tennessee. After disposition of certain preliminary motions, the Court granted plaintiffs' motion for a summary judgment and ordered the two Boards to submit plans for desegregation. The Court has held a hearing on the plan submitted by the City and plaintiffs' objections thereto, and this memorandum decision deals only with the City's proposed plan.

Under the plan submitted by the City Board, grades ones through three would be desegregated beginning with the school year 1963-64, grades four through six beginning with the school year 1964-65, and thereafter, starting with the seventh grade, and beginning with the school year 1965-66, one additional grade would be desegregated each year. The plan does not specifically describe the proposed new unitary zones or districts to be applicable to desegregated grades, stating only that they would in due course be established. It developed at the hearing that a map setting out the proposed unitary zones for elementary schools was in existence and had the tentative approval of the City Board. For the reason that a realistic appraisal could not otherwise be made of the plan submitted, the Court asked that the proposed zoning map be placed in evidence, which was done. It appeared that no such map of proposed unitary zones for the junior and senior high schools is now in existence.

Under the proposed plan, all pupils heretofore enrolled would be entitled to attend the school in which they are presently enrolled until they graduate from that school

even though they do not live in the unitary zone or district of that school. All pupils entering grades desegregated under the plan would be entitled to attend the school in whose zone they reside, without regard to race and whether or not they were previously enrolled therein, but it is not clear what the priority of the rights would be between such pupils and pupils already attending that school. Pupils entering a desegregated grade for the first time could attend any school they choose provided their choices were approved by the Superintendent. Again, the plan is not altogether clear as to the priority of the rights to attend a particular school between pupils who live in the unitary zone and those who live outside.

Under the plan, general authority is vested in the Superintendent to grant or require transfers with specific standards to be applied, none of which has to be with race or color.

Pupils living outside the city limits may, under the plan, be admitted to the schools provided they accept assignment to schools designated by the Superintendent.

A "Civil Technician Class," which apparently trains pupils to be helpers to civil engineers, would be desegregated beginning in the school year 1963-64.

The specification of objections filed by plaintiffs alleges, in substance, that the proposed plan in no way meets the constitutional requirements established by the School Segregation Cases.

The school system is approximately 40% Negro. There are five elementary schools, two junior high schools and one high school heretofore attended primarily* by white

* There has been some voluntary desegregation which will be referred to hereafter.

pupils. There are three elementary schools, one junior high and one high school heretofore attended only by Negroes. The total school population is approximately 7900. The homes of Negro pupils are heavily concentrated in certain areas of the city. The faculties are also segregated.

In support of its contention that it needs the time contemplated by the plan submitted, the Board showed by proof that a standard achievement test administered to the pupils indicates that there has been little difference in achievement levels between white and Negro pupils in the early grades, but that gradually and by the time the sixth grade is reached, the white pupils have reached an achievement level substantially in advance of the national median and the achievement level of Negro pupils has fallen substantially below the national median. The proof shows that if Negro children were in substantial numbers integrated initially into the upper grades, many of them would not be able to compete and would tend to fall behind, become frustrated, a problem to the school, and finally perhaps drop out of school. It also shows that those who are integrated initially in the lower grades are not as likely to develop this differenee in achievement level. Therefore, the Board argues, it is to the interest of both the white and Negro pupils to integrate them initially only in the lower grades as proposed by the Board.

The Board also showed that children of the age of those attending the lower grades are not difficult to handle and to discipline, but that children, upon reaching their early teens, in junior and senior high, frequently tend to resent direction and discipline. Therefore, the Board argues, it would be a mistake to accentuate this problem by requir-

ing the adjustment to integration by white and Negro children for the first time at this difficult age.

The Board also showed that it heretofore voluntarily integrated seven Negro pupils, which action, it argues, is at least some indication of an effort in good faith to comply with the law.

With respect to tangible factors, the proof did not show any substantial difference betwen the quantity and quality of the buildings, equipment and curricula of the "white" and "Negro" schools but it did show that the faculty in the "white" schools is superior.

The proof showed that both white and Negro children will, where they have a choice, frequently choose to attend a school in which they will be in a majority.

Subsequent to the decision of the Supreme Court holding compulsory segregation in public schools unconstitutional (Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954)), and that desegregation must proceed with all deliberate speed (second Brown opinion, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955), the Court stated as dicta in Watson v. City of Memphis, 373 U.S. 526, 83 S.Ct. 1314, 10 L.Ed.2d 529 (1963), a holding dealing with desegregation of public parks:

> "* * * Given the extended time which has elapsed, it is far from clear that the mandate of the second Brown decision requiring that desegregation proceed with 'all deliberate speed' would today be fully satisfied by types of plans or programs for desegregation of public educational facilities which eight years ago might have been deemed sufficient. Brown never contemplated that the concept of 'deliberate speed' would countenance indefinite delay in elimination of racial

barriers in schools, let alone other public facilities not involving the same physical problems or comparable conditions.

* * * * *

"Most importantly, of course, it must be recognized that even the delay countenanced by Brown was a necessary, albeit significant, adaptation of the usual principle that any deprivation of constitutional rights calls for prompt rectification. The rights here asserted are like all such rights, present rights; they are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled. The second Brown decision is but a narrowly drawn, and carefully limited, qualification upon usual precepts of constitutional adjudication and is not to be unnecessarily expanded in application."

Thus it is clear that a gradual plan for desegregation which constituted "all deliberate speed" in 1954 might not satisfy that mandate of the Supreme Court if adopted in 1963.

[1] The reason recognized by the law for allowing time for desegregation is the existence of administrative problems (second Brown opinion, supra.) However, if administrative problems exist, the extent to which tangible factors are equal in the Negro and white school systems has been held to be a major consideration in determining how much time should be allowed. Boyce v. Board of Education of Humphreys County, 7 Race Rel.L.Rep. 372, 378

(M.D.Tenn.1961). In determining whether a plan submitted by a school board is offered in a good faith effort to comply with the law, the Court should consider voluntary efforts, if any, to bring the system into compliance. (See, for example, Dove, et al. v. Parham, et al., 181 F.Supp. 504, 513 (E.D.Ark.1960) aff'd 282 F.2d 256 (C.A. 8, 1960).)

[2] In taking into account the foregoing considerations, the aim of the Court should be to bring about abolition of discrimination as early as possible consistent with the educational well being of the white and Negro school children. It is with this aim in view that we apply the law to the facts of this case.

While we believe, and so find, that the plan submitted constitutes a good faith effort by the Board to comply with the law, we do not believe that it fully meets the requirement of "all deliberate speed" as contemplated by the language of the Supreme Court in the Watson case, supra.

In terms of numbers, as stated, the ratio of Negro to white pupils is approximately 40-60. This figure is, however, somewhat misleading as a measure of the extent to which integration will actually occur under the proposed plan. Because the homes of Negro children are concentrated in certain areas of the city, a plan of unitary zoning, even if prepared without consideration of race, will result in a concentration of Negro children in the zones of heretofore "Negro" schools and white children in the zones of heretofore "white" schools. Moreover, this tendency of concentration in schools will be further accentuated by the exercise of choice of schools, even though the provision in the plan with respect to choice is constitu-

tional in that it contemplates voluntary choice and has no reference to race. Therefore, any problems created by the difference in accomplishment levels and the adjustment to attending school with persons of the other race would not be as great as might be anticipated.

[3] It therefore seems, and the Court finds, that the following schedule for desegregation would be workable: the first through third grades in the school year 1963-64, the fourth through the sixth grade in the school year 1964-65 (as contemplated by the plan submitted); and the seventh and eighth in 1965-66, the ninth and tenth in 1966-67 and eleventh and twelfth in 1967-68. This schedule would contemplate the completion of the plan in five steps but actually within four years from the present date.

With respect to the grades which have been desegregated under this plan, the Board may adopt any admission or transfer plan as may in its judgment be reasonable or proper, provided, however, that no admission or transfer will be based upon race or have as its purpose the delay of desegregation as contemplated by the plan. It is not necessary otherwise to spell out the rights and duties of the Board in this regard.

The plan also must make it clear that any pupil who resides in a zone established under the plan and who is otherwise entitled under the plan to attend the school for that zone shall have a right to attend that school which is prior to the right of all other who do not live in that zone.

The Court believes that the Board should have administrative discretion in establishing unitary zones, provided that the zones do not clearly thwart the plan to bring about abolition of discrimination. The unitary zones for

elementary schools contemplated by the Board (Exhibit 6), the Court believes, do not constitute an abuse of this discretion and are therefore approved. A plan for unitary zones for the junior high system must be submitted by the Board not later than March 1, 1965 and a plan for the senior high schools must be submitted by the Board not later than March 1, 1966.

The plan should provide that pupils who do not live within the city will be admitted or assigned to schools in accordance with the discretion of the Board but, in doing so, no discrimination as to race will be made in admitting or assigning pupils to grades which have then been desegregated under this plan.

The Civil Technicians Class must under the plan, and as contemplated by the Board's plan, be desegregated in the 1963-64 school year. Moreover, the classes for the multiple handicapped and mentally retarded children must be desegregated in the 1963-64 school year if and so long as separate classes and facilities are maintained for these categories of pupils.

[4] An application has been made by plaintiffs for desegregation of teachers, principals and sustaining personnel. In Mapp v. Board of Education of Chattanooga, 319 F.2d 571 (C.A.6, 1963), it was held that Negro pupils and their parents cannot in a class action, as this is, assert the rights of Negro principals and teachers but that they can assert claim to desegregation of teachers and principals as part of their right to an abolition of discrimination in the public schools. This case also held that the pupils and parents have absolutely no right to assert a claim to desegregation of supporting personnel. The judg-

ment should provide that the claim to desegregation of teachers and principals will be held under advisement pending the implementation of the plan, and that the application for desegregation of supporting personnel be stricken.

The judgment should also provide that the Court will retain jurisdiction so long as necessary to effectuate the desegregation of the Jackson city school system as required by the Constitution of the United States.

Plaintiffs and defendant Board will each submit by August 15, 1963, a proposed draft of a judgment consistent with this memorandum decision.

Judgment

(Filed August 20, 1963)

This cause was heard the 26th and 27th days of July, 1963 before the Honorable Bailey Brown, United States District Judge, sitting without intervention of a jury, upon the entire record and especially upon the desegregation plan filed by the defendant, Board of Commissioners of the City of Jackson pursuant to summary judgment heretofore granted by the Court, upon the specifications of objection filed by the plaintiffs to said City desegregation plan, and the evidence introduced in open Court, and the Court makes the findings and holdings stated in its Memorandum Decision filed August 12, 1963 a part of the record, which Memorandum Decision is hereby adopted as the Court's Findings of Fact and Conclusions of Law.

IT IS, THEREFORE, ORDERED, ADJUDGED, DECREED AND ENJOINED as follows:

1. This is a proper class action of which the Court has jurisdiction under Title 28, United States Code, Sections 1331 and 1343, and Title 42, United States Code, Sections 1981 and 1983, filed by the plaintiffs, all Negroes, seeking desegregation of the public schools of the City of Jackson and Madison County, Tennessee. This judgment applies only to desegregation of the Jackson City schools.

2. Desegregation of the public schools of the City of Jackson, Tennessee will be effected by defendant City Board of Commissioners in accordance with the following schedule which the Court finds to be workable and which will complete desegregation of the schools within four years from the present date:

a) The first through third grades in the school year 1963-64;

b) The fourth through the sixth grades in the school year 1964-65;

c) The seventh and eighth grades in 1965-66;

d) The ninth and tenth grades in 1966-67;

e) The eleventh and twelfth grades in 1967-68.

3. With respect to the grades which have been desegregated under this plan the defendant Board of Commissioners may adopt any assignment, admission or transfer plan or policy as may in its judgment be reasonable or proper, provided, however, that no assignment, admission or transfer will be based upon race or have as its effect the delay of desegregation as contemplated by the plan.

4. Any pupil who resides in an attendance zone established under the plan and who is otherwise entitled under the plan to attend the school for that zone shall have a right to attend that school which is prior to the right of all others who do not live in that zone.

5. The unitary zones for elementary schools contemplated by said defendant Board shown on the map filed as Exhibit 6 are approved. The defendant Board of Commissioners will file with the Court a plan for unitary nonracial zones for the junior high school system not later than March 1, 1965, and for the senior high schools not later than March 1, 1966. The Board may make changes in the unitary zones from time to time, provided the zones are not based on race and do not have as their effect the delay of desegregation as contemplated by the plan.

6. Pupils who do not live within the City of Jackson will be admitted or assigned to schools in accordance with the discretion of the defendant Board of Commissioners but, in doing so, no discrimination as to race will be made in

admitting or assigning pupils to grades which have been desegregated under the plan.

7. As contemplated by the plan filed by defendant Board of Commissioners, the Civil Technicians Class will be desegregated in the 1963-64 school year. Also, the classes for the multiple handicapped and mentally retarded children will be desegregated in the 1963-64 school year if and so long as separate classes and facilities are maintained for those categories of pupils.

8. The claim of the plaintiffs for desegregation of teachers and principals procedurally may properly be asserted in this class action as a part of their claim to an abolition of racial discrimination in the public schools, but this claim will be and is held under advisement pending the implementation of the plan. The application of the plaintiffs for desegregation of supporting personnel is stricken.

9. All provisions of the desegregation plan filed in this case by the defendant City Board of Commissioners which are contrary to or inconsistent with this judgment are disapproved.

10. Jurisdiction is retained by this Court so long as necessary to effectuate the desegregation of the Jackson City School System as required by the Constitution of the United States.

/s/ BAILEY BROWN
United States District Judge

A TRUE COPY
ATTEST;
W. LLOYD JOHNSON, Clerk
By /s/ D. H. SAWYER, D.C.

Addendum to Memorandum Opinion

(Filed October 9, 1963)

Subsequent to the filing of the foregoing memorandum decision (in lieu of findings and conclusions) and the entry of a judgment based on the decision, the Jackson schools opened for the 1963-64 school year. Thereafter, plaintiffs filed a motion under Rule 60 for "appropriate relief." In this action, plaintiffs attacked the decision and judgment of the Court, and to this extent the motion was in effect a motion to amend findings and conclusions or for a new trial. Plaintiffs also, in their motion, contended that the defendant Board is not properly applying the plan as approved by the Court. A hearing has been held on the plaintiffs' motion, and this addendum to the original memorandum decision constitutes the Court's ruling on the motion.

Plaintiffs have misconstrued the ruling of the Court in one respect. Under the plan submitted by the defendant Board, pupils would be allowed to continue in the particular school they were attending in 1962-63 until they graduate from that school irrespective of the new unitary zones adopted under the plan. The Court intended to approve, and does approve, this provision so long as pupils who have a right to attend a school by virtue of residing in the new unitary zone of the shool would not thereby be deprived of their right to attend. In short, the Court saw good reason for allowing a pupil to continue in the school he has been attending and he should be allowed to do so provided pupils residing in the new unitary zone of the school have first choice to attend the school. This good reason is the obvious advantage of a continuation in familiar surroundings with the same teachers and fel-

low students. This provision will, of course, expire by its own terms in a relatively few years.

As heretofore stated, some Negro pupils have been attending "white" schools. The memorandum decision and judgment do not deal with their right to continue to do so. The defendant Board has taken the position that unless these pupils would be entitled to attend the "white" schools under the general provisions of the approved plan, they will be denied this right. Accordingly, the Board has required these Negro pupils to leave the heretofore "white" school system if, but only if, they, at the end of 1962-63 school year, graduated from the school they had been attending. While the overall plan approved by the Court meets, in the Court's opinion, the requirement of "all deliberate speed," at the same time the Court believes and so finds that it should be a part of the plan that Negro pupils already attending school in the "white" school system be allowed to continue to do so.

Plaintiffs seek to have set aside the approval by the Court of the unitary zones for grades one through six as proposed by the defendant Board on the ground that, plaintiffs claim, these zones are gerrymandered to effect a perpetuation of segregation. As heretofore indicated, the Court believes that the school Board should be allowed considerable discretion in establishing unitary zones for attendance and that the action of the Board should not be overridden unless it constitutes a clear abuse of this discretion. Certainly this Court would be entering an administrative thicket if it sought to divide the city into zones and should do so only when the need for such action is clear and plain. The Court does not believe, from the evidence adduced at the trial, that establishment of these zones does constitute an abuse of discretion.

Addendum to Memorandum Opinion

The plaintiffs make more basic attacks on these unitary zones. The proof shows that the residences of the Negroes in Jackson are in substantial part concentrated in certain areas with the result that *de facto* segregation in the school system will be promoted by a geographical zoning system even if it is not gerrymandered. From this the plaintiffs argue that the unitary zones based on residence do not comply with the requirements of the Constitution. First they argue that the School Segregation Cases require integration of white and Negro pupils rather than an abolition of compulsory segregation based on race. Secondly they argue that, even if the School Segregation Cases require only an abolition of discrimination, a right to attend schools based on residence zones is in substance a right to attend based on race.

Plaintiffs make these same attacks on the provision in the plan whereby pupils are allowed, within the limitation heretofore described, to continue in the particular school now attended until graduation. This, plaintiffs argue, promotes *de facto* segregation, and therefore runs counter to the claimed mandate of the School Segregation Cases to effect integration. Plaintiffs also argue that this provision amounts to a recognition of racial factors with respect to admissions and transfers in view of the prior history of the operation in Jackson of segregated schools.

With respect to the contention that the Law requires more than an abolition of compulsory segregation based on race and that it sets up an affirmative duty to bring about integration, this Court heretofore had occasion to point out in the Obion County, Tennessee, school case, *Vick* v. *County Board of Education of Obion County*, 205 F.Supp. 436, 7 R. Rel. Rep. 380 (WD Tenn. 1962) that the language of the Supreme Court in the leading case of

Brown v. *Board of Education*, 347 U.S. 483 (1954), and 349 U.S. 294 (1955), and *Cooper* v. *Aaron*, 358 U.S. 1 (1958) does not support this contention.

It can, of course, be argued that the decision of the Supreme Court in the *Brown* case is based primarily on a finding that separate facilities for the two races cannot be equal because of the adverse psychological and sociological effect of such segregation on the children. See Blaustein & Ferguson, *Desegregation and the Law* (Vintage, 2d Rev. Ed. 1962), Chapters 9 and 10. From this it can be argued that even if *de facto* racial segregation results from voluntary choice or from consideration of factors other than race, the law requires that it be ended in order to bring about equality of educational opportunity. (It should be pointed out, in passing, that the view that the Supreme Court's decision is based on findings of fact also can plausibly support the argument that in each school desegregation case a separate inquiry must be made as to the effect of segregation on school children in that community. This was the holding in the case of *Stell, et al.* v. *Savannah-Chatham County Board of Educaiton, et al.*, —— F.Supp. —— (SD Ga., June 28, 1963), which decision appears to have been reversed. —— F.2d —— (CA 5, May 24, 1963).) However, even conceding that the Supreme Court's decision in the *Brown* case is primarily based on such a finding of fact, the finding of fact was not that segregation *per se* has a detrimental effect on children but rather the finding was that *compulsory segregation based on race* has such an effect. Moreover, even if the Supreme Court did reach the conclusion, based on the record, that racial segregation did *per se* have this adverse effect on the children, it is difficult to see how it could have declared all racial segregation in the schools

unconstitutional because presumably voluntary segregation cannot be said to result from "state action." Accordingly, it does not follow that the Supreme Court's decision in the *Brown* case commands integration rather than an abolition of compulsory segregation based on race even if it be considered to be grounded primarily on a finding of fact.

There remains to be dealt with the argument of plaintiffs to the effect that in the factual context here existing the admission of children into schools according to their residence locations and allowing them to continue in the particular school heretofore attended until graduation amounts to compulsory segregation because of race or in any event amounts to a consideration of racial factors in admissions and transfers.

There is nothing in the *Brown* decision or in other Supreme Court decisions in this field or in the decisions of the Court of Appeals for this Circuit which indicates that school attendance cannot be based on neighborhood zoning. In one case (*Northcross, et al.* v. *Board of Education of the Memphis City Schools, et al.*, 302 F.2d 818 (CA 6, 1962), cert. den. 370 U.S. 944 (1962)) our Court of Appeals said at page 823:

> "Minimal requirements for non-racial schools are geographic zoning, according to the capacity and facilities of the buildings and admission to a school according to residence as a matter of right."

If Negro residences tend to be concentrated in certain areas because of illegal pressure or compulsion, certainly the remedy for this is not to upset the system of neighborhood public schools.

Addendum to Memorandum Opinion

The holding in the case of *Goss* v. *Board of Education of Knoxville* and *Maxwell* v. *County Board of Education of Davidson County, Tennessee,* —— U.S. —— (June 3, 1963) does not support plaintiffs' contention that allowing pupils to continue in their particular schools until graduation is an unconstitutional consideration of racial factors in the admission and transfer of pupils. This Court approved this provision in the plan, as amended by this Court, for good reasons, herein indicated, having nothing to do with race. This provision applies equally to white and Negro pupils, contemplates a voluntary decision on the part of pupils and parents involved, and applies regardless of the racial composition of the school in which a pupil would continue until graduation.

Concurrently with the filing of this addendum the Court is entering an order on plaintiffs' motion under Rule 60.

/s/ Bailey Brown
United States District Judge

A True Copy
Attest:
W. Lloyd Johnson, Clerk
By /s/ D. H. Sawyer, D.C.

Motion for Further Relief and to Add Parties as Additional and/or Intervening Plaintiffs

Filed September 4, 1964.

[Caption Omitted]

Come the original plaintiffs in the above entitled case and respectfully move the Court to grant them further relief against the defendants, Board of Commissioners of the City of Jackson, Tennessee, its Board Members and C. J. Huckaba, Superintendent of City Schools, and to add and/or permit to intervene as additional and/or intervening plaintiffs in said case, the following: Portia P. Porter, an infant, by her father and next friend, Albert J. Porter; Garland Lyons, an infant, by his mother and next friend, Mrs. Annie L. Lyons; Willie Roy Sorrells, Jr., James Willie Sorrells, and Jesse D. Ruffin, infants, by their mother and next friend, Mrs. Ida Mae Sorrells; Carmen Golden, an infant, by her mother and next friend, Mrs. Ernest Golden; Kathey Robinson and Norvell L. Robinson, infants, by their mother and next friend, Mrs. Mary Robinson; Joyce Ledbetter, Willie Ledbetter and Debbie Ledbetter, infants, by their mother and next friend, Mrs. Glyn A. Ledbetter; Craig Oneal Davis, Bobbie Davis, Kathy Davis, and Ernest W. Davis, infants, by their grandmother and next friend, Mrs. Bobbie Glenn; Curtis S. White and Terry Wayne, infants, by their mother and next friend, Mrs. Stella White; Valerie Elizabeth Fisher and Theda Bara Fisher, infants, by their mother and next friend, Mrs. Christiana Jones Fisher; Melvin Harris, infant, by his mother and next friend, Mrs. Melvin Harris; Moneda Merriwether, infant, by her mother and next

friend, Mrs. Booker T. Merriwether; Gwendolyn F. Davis, infant, by her father and next friend, Thomas B. Davis; Barbara Ann Morrow and Terry Lee Morrow, infants, by their mother and next friend, Mrs. Freddie Moore; Carlin Anita Brown, infant, by her mother and next friend, Mrs. Carl Brown; Myrtle Faye Gooch, infant, by her mother and next friend, Mrs. Alice Gooch; Emma Merriweather, infant, by her mother and next friend, Mrs. Annie L. Merriweather; and Albert J. Porter, Mrs. Annie L. Lyons, Mrs. Ida Mae Sorrells, Mrs. Ernest Golden, Mrs. Mary Robinson, Mrs. Glyn A. Ledbetter, Mrs. Bobbie Glenn, Mrs. Stella White, Mrs. Christina Jones Fisher, Mrs. Melvin Harris, Mrs. Booker T. Merriwether, Thomas B. Davis, Mrs. Freddie Moore, Mrs. Carl Brown, Mrs. Alice Gooch, and Mrs. Annie L. Merriweather, individually, all of whom also pray for said further relief against said defendants on the grounds and for the reasons hereinafter stated:

On 20 August 1963, this Court entered a judgment in this action requiring desegregation of the public schools of the City of Jackson, Tennessee, by the above defendants within four years encompassing the first three grades in the school year 1963-64, the next three grades in 1964-65, and two grades successively each school year thereafter until completed. Said judgment provided, in part:

> "With respect to the grades which have been desegregated under this plan the defendant Board of Commissioners may adopt any assignment, admission or transfer plan or policy as may in its judgment be reasonable or proper, provided, however, that no assignment, admission or transfer will be based upon

race or have as its effect the delay of desegregation as contemplated by the plan."

"Any pupil who resides in an attendance zone established under the plan and who is otherwise entitled under the plan to attend the school for that zone shall have a right to attend that school which is prior to the right of all others who do not live in that zone.

"The unitary zones for elementary schools contemplated by said defendant Board shown on the map filed as Exhibit 6 are approved. . . . The Board may make changes in the unitary zones from time to time, provided the zones are not based on race and do not have as their effect the delay of desegregation as contemplated by the plan.

"The claim of the plaintiffs for desegregation of teachers and principals procedurally may properly be asserted in this class action as a part of their claim to an abolition of racial discrimination in the public schools, but this claim will be and is held under advisement pending the implementation of the plan."

Said Court-approved school zone lines established by defendants were drawn artificially along the margins of dominantly Negro and white residential areas, so as to take maximum advantage of said residential segregation and to send Negro children great distances and across railroad tracks, busy traffic centers, and other dangerous obstacles to be assigned and attend formerly Negro schools and deny them admission to formerly white schools in their immediate neighborhoods where white children, both

in and out of such neighborhoods, were and are permitted freely to register and attend. This racial gerrymandering was especially apparent in the zones established for the formerly Negro South Jackson, Lincoln, and Washington-Douglass Elementary Schools, and the formerly white Alexander, Whitehall and Parkview Elementary Schools.

Thereafter said defendants adopted and made public an admission and transfer plan or policy providing that as grades were desegregated students might attend the proper desegregated school in their respective zones and further, that any student enrolled in a city school for the 1962-63 school year may continue to attend the same school until graduation from or completion from such school, regardless of zone lines.

Said plan or policy further provided that new city students entering the city schools for the first time in a desegregated grade "may register at the school of their choice even though such school may be outside the district area in which said student lives," subject to an option given to the superintendent to re-assign such students on the basis of said school zones.

Said defendants continued and still continue to maintain complete faculty segregation assigning all Negro faculties to formerly Negro schools and all white faculties to formerly white schools.

In the 1963-64 school year a total of approximately 40 Negro students attended a total of approximately 5 formerly white schools either because of assignment thereto prior to the Court's decree of 20 August 1963 or because of residence within the predominantly white zones established for said schools. Although many white students, both new and old, resided within the dominantly Negro

zones for the formerly Negro schools all of these white students registered in and were permitted by defendants to attend formerly white schools outside their zones, because they were white persons. As a result all formerly Negro schools remain totally "Negro" as to both faculty and student assignment. The intervening or additional infant plaintiff, Myrtle Faye Gooch, who like all the other intervening or additional plaintiffs is a Negro, registered as a new student in the first grade at formerly white Alexander School, being the school of her choice and the one nearest her residence, but defendants removed her therefrom and reassigned her to the all-Negro and greatly distant South Jackson school according to said gerrymandered zone lines. (See affidavit of Mrs. Alice Gooch, attached hereto, marked "Exhibit A")

At the beginning of the 1964-65 school year there were many new white and Negro students entering the Jackson City Schools either as first graders or as new residents entering other desegregated grades, all of whom reside in zones of formerly Negro schools. All such white children registered and were assigned by defendants instead to formerly white schools outside these "Negro" zones. But all or nearly all of such Negro children residing in the same neighborhoods and school zones as said white children, who registered or sought to register in formerly white schools outside their zones, were removed by defendants and reassigned to the Negro schools, solely because of their race or color. These re-assignments were effected by letters received from Superintendent C. J. Huckaba on Saturday, 29 August 1964, just two days before the opening of school on Monday, 31 August 1964 and over ten days after they had registered in said formerly white

schools on or about 18 or 19 August 1964. Included in this group are the intervening or additional infant plaintiffs, Portia P. Porter, who registered in formerly white Whitehall School and was re-assigned to Negro Lincoln School, Garand Lyons, who registered in formerly white Parkview School and was re-assigned to Negro Washington-Douglass School, and Joyce Ledbetter, Craig Oneal Davis, Barbara Ann Morrow, Curtis White, Kathey Robinson, Willie Roy Sorrells, Jr., James Willie Sorrells, and Jesse D. Ruffin, all of whom registered in formerly white Alexander School and were re-assigned to Negro South Jackson School (See joint affidavit of Albert J. Porter, Mrs. Annie L. Lyons, Mrs. Glyn Ann Ledbetter, Mrs. Bobbie Glenn, Mrs. Freddie Moore, Mrs. Stella White and Mrs. Mary Robinson, attached hereto, marked "Exhibit B," and affidavit of Mrs. Ida Mae Sorrells, attached hereto, marked "Exhibit C")

Also at the beginning of the 1964-65 school year there were many white and Negro students in the second grade who were not enrolled in the city schools during the 1962-63 school year, residing in the Negro school zones, and not covered by the 1962-63 enrollment option of defendants' plan or policy. All of these white children, instead of registering in the formerly Negro schools for which they were zoned, instead registered and were assigned and accepted by defendants, in formerly white schools. All such Negro children, however, were assigned by defendants and required to remain in the Negro schools for which they were zoned, or to attend some Negro school outside their zone. Included in this group is the intervening or additional infant plaintiff, Bobbie Davis, who registered in the second grade at formerly white Alexander

School on 19 August 1964, same being nearest his residence and the school of his choice, and was removed therefrom and re-assigned by defendants on 19 August 1964 either to the Negro South Jackson School for which he was zoned or the Negro elementary school which defendants allowed him to choose for attendance last year, although outside his zone, because it was a Negro school. Defendants permit free choice of assignments and transfers out of zone by Negro students to formerly Negro schools and by white students to formerly white schools regardless of zone lines, but deny all requests for assignment or transfer of Negro students to formerly white schools when they do not reside within the zones of those schools. (See affidavit of Mrs. Bobbie Glenn, attached hereto, marked "Exhibit B")

A number of Negro students who reside in immediate proximity to formerly white Alexander, Whitehall and Parkview Schools, but, by gerrymandering, have been placed in the extreme ends of defendants' zones for the Negro South Jackson, Lincoln and Washington-Douglass Schools, because of financial hardship in providing transportation to these distant Negro schools or the extremely dangerous traffic and other hazards involved in walking to them, registered their children in said formerly white schools on 19 August 1964. Ten days later, on 29 August 1964, just before the opening of school, defendants, by written notification received 29 August 1964, removed these children from said schools and assigned them to all Negro schools, in some instances the schools for which they were zoned and in other instances either the school for which they were zoned or the school they attended last year. Included in the former group are the inter-

vening or additional plaintiffs, Valerie Elizabeth Fisher, Theda Bara Fisher, Melvin Harris and Moneda Merriwether, who registered in formerly white Whitehall School and were re-assigned to all-Negro Lincoln School, Gwendolyn F. Davis, who registered in formerly white Parkview School and was re-assigned to all-Negro Washington-Douglass School, and Terry Lee Morrow, Carlin Anita Brown, Myrtle Faye Gooch, and Emma Merriweather, all of whom registered in formerly white Alexander School and were re-assigned to all-Negro South Jackson School. Included in the latter group were the intervening or additional plaintiffs, Carmen Golden, who registered in formerly white Alexander School and was re-assigned to either all-Negro South Jackson School for which she was zoned or previously attended all-Negro Washington-Douglass School, and Norvell L. Robinson, Willie Ledbetter, Debbie Ledbetter, Kathy Davis, Ernest W. Davis, and Terry Wayne, all of whom registered in formerly white Alexander School, but were either re-assigned to all-Negro South Jackson School, for which they were zoned, or the previously attended all-Negro Lincoln School. These Negro students would not have been removed from or re-assigned from said white schools to said Negro schools if they had been white persons for, as aforesaid, registration of a white child in a formerly white school is tantamount to assignment where such child resides in the zone of a formerly Negro school. Defendants apply zone lines or other admission or transfer restrictions only for and with the purpose and effect of preserving racial segregation in the schools. (See Affidavits of Mrs. Alice Gooch, Mrs. Bobbie Glenn, Mrs. Ernest Golden, Mrs. Mary Robinson, Mrs. Glyn A. Ledbetter, Mrs. Christiana Jones

Motion for Further Relief and to Add Parties as Additional and/or Intervening Plaintiffs

Fisher, Mrs. Melvin Harris, Mrs. Booker T. Merriwether, Thomas B. Davis, Mrs. Freddie Moore, Mrs. Carl Brown, and Mrs. Annie L. Merriweather, attached hereto, respectively marked Exhibits A, and D to N, inclusive.)

Defendants have operated and are operating their so-called admission or transfer plan or policy so that, regardless of zone lines, all white students are permitted to register in formerly white schools of their choice and all Negro students are permitted to register in formerly Negro schools of their choice. Such registration is tantamount to assignment unless defendants decide to "assign" the student to another school. Defendants "assign" students to another school in such case only when such an assignment will remove a Negro student from a formerly white school or prevent a white student from being required to attend a formerly Negro school. Defendants "assign" Negro students to formerly Negro schools and require them to attend on the basis of school zone lines, but they have never "assigned" any white student or students or required any such student or students to attend a formerly Negro school, on the basis of zone lines, or for any other reason, although there are many white students residing within said dominantly Negro zones. Nor have defendants ever "assigned" or required a single Negro student or students to attend a formerly white school, on the basis of zone lines, although there are some living within said dominantly white zones.

Negro students are allowed to attend formerly white schools only when they insist upon it and reside within the zones of these schools. The zone lines are therefore used by defendants solely to restrict the number of Negro students who may elect to attend formerly white schools. Defendants further discourage any voluntary choice of

formerly white or formerly Negro schools by students of the opposite race, through the continued maintenance of segregated white and Negro faculties therein. As a result of said racially "one-way" admission or transfer system the Negro schools remain completely segregated and the white schools substantially segregated on a racial basis, although desegregation is now supposedly in effect under the Court's decree for the second school year and in six grades.

Plaintiffs aver that said admission and/or transfer plan or policy adopted and pursued by said defendants is based solely on race, hinders and delays desegregation, perpetuates segregation and violates their rights and those of the class they represent, including the intervening or additional plaintiffs herein sought to be joined, to a racially nondiscriminatory school system in and for the City of Jackson, Tennessee, in violation of the Fourteenth Amendment to the Constitution of the United States and is therefore unconstitutional and void.

Plaintiffs further aver that said defendant's said racially discriminatory manner of operating said admission and/or transfer plan or policy in such a way as to lead towards continued racial segregation violates said constitutional rights of plaintiffs and the class they represent, including said intervening and/or additional plaintiffs, and is therefore unconstitutional and void.

Plaintiffs further aver that said admission and/or transfer plan or policy and system as operated by said defendants in conjunction with said racially gerrymandered school zones and the continued maintenance of racially segregated faculty assignment, has the necessary purpose and effect, and has resulted, in the continued maintenance

and operation of substantially segregated schools and, in particular, continued complete segregation as to both faculty and students in all formerly Negro schools, which remain all-Negro, and which plaintiffs and those they represent, including said intervening or additional plaintiffs, are required to attend, while no white child residing within the zone of these schools is required to attend same. Plaintiffs, and the class they represent, including the additional and/or intervening plaintiffs, are thereby deprived of and denied their rights secured by the Fourteenth Amendment to the Constitution of the United States, and all of said actions of defendants are therefore unconstitutional and void.

Plaintiffs aver that this action was sustained as a class action, that all of the intervening and/or additional plaintiffs first named hereinabove are members of the class for whom the suit was brought and assert the same constitutional rights asserted by the original plaintiffs and claim entitlement to further relief under and by virtue of the Judgment entered by the Court in this cause for their benefit. Plaintiffs further aver that immediate relief is required for the reason that if the intervening and/or additional plaintiffs accede to defendants' above mentioned actions assigning them on the ground of race or color to said respective all-Negro schools, defendants may claim that they have in effect acquiesced in said unconstitutional assignments and are required to seek transfer and/or reassignment under the Pupil Assignment Law contrary to the Fourteenth Amendment and to the Judgment of this Court prohibiting any admission or transfer plan based on race or having as its effect the delay of desegregation as contemplated by the plan. For this reason some of

Motion for Further Relief and to Add Parties as Additional and/or Intervening Plaintiffs

the intervening or additional plaintiffs have remained out of said Negro schools and are standing on their rights to attend the formerly white schools for which they registered on a nonracial basis. In view of the foregoing the representation of the interests of the intervening or additional plaintiffs by the original plaintiffs is or may be inadequate, although they will be bound by the Court's judgment herein. In addition their claim to enjoyment of a racially nondiscriminatory school system and for further relief herein is based on the same questions of law and facts, as hereinabove set out, upon which the original plaintiffs rely, and they hereby adopt and rely upon not only these facts but the original complaint and all other pleadings heretofore filed by the original plaintiffs in this case.

Plaintiffs pray that the Affidavits attached hereto marked "Exhibits A to N" inclusive be treated as incorporated herein and made a part of this motion.

WHEREFORE, PREMISES CONSIDERED, plaintiffs move the Court and pray:

1. That this motion be filed and that the said intervening and/or additional plaintiffs, Portia P. Porter, Garland Lyons, Willie Roy Sorrells, Jr., James Willie Sorrells, Jesse D. Ruffin, Carmen Golden, Kathey Robinson, Norvell L. Robinson, Joyce Ledbetter, Willie Ledbetter, Debbie Ledbetter, Craig Oneal Davis, Bobbie Davis, Kathy Davis, Ernest W. Davis, Curtis S. White, Terry Wayne, Valerie Elizabeth Fisher, Theda Bara Fisher, Melvin Harris, Moneda Merriwether, Gwendolyn F. Davis, Barbara Ann Morrow, Terry Lee Morrow, Carlin Anita Brown, Myrtle Faye Gooch, Emma Merriweather, Albert J. Porter, Mrs.

Motion for Further Relief and to Add Parties as Additional and/or Intervening Plaintiffs

Annie L. Lyons, Mrs. Ida Mae Sorrells, Mrs. Ernest Golden, Mrs. Mary Robinson, Mrs. Glyn A. Ledbetter, Mrs. Bobbie Glenn, Mrs. Stella White, Mrs. Christiana Jones Fisher, Mrs. Melvin Harris, Mrs. Booker T. Merriwether, Thomas B. Davis, Mrs. Freddie Moore, Mrs. Carl Brown, Mrs. Alice Gooch and Mrs. Annie L. Merriweather, be added or allowed to intervene as plaintiffs in this cause under Rule 21 and/or Rule 24 of the Federal Rules of Civil Procedure, and pursuant to the Judgments of the Court previously entered in the case; and that, if deemed necessary or applicable, this motion be treated as the pleading required by Subparagraph (c) of said Rule 24.

2. That the defendant, Board of Commissioners of the City of Jackson, Tennessee, its Board Members, and C. J. Huckaba, Superintendent of the City Schools of Jackson, their successors, agents and employees, be permanently enjoined from assigning, re-assigning, transferring or otherwise requiring said additional or intervening plaintiffs named hereinabove or any other students, similarly situated, to attend any school or schools in the Jackson City School System other than the respective formerly white schools in which they registered and sought to attend as set out hereinabove in this Motion, and that said defendants be required to admit them respectively to said Alexander, Whitehall and Parkview Elementary Schools in which they respectively registered or sought to register.

3. That said defendants be permanently enjoined from continuing to operate, apply and/or enforce against any of the plaintiffs, or any other students, similarly situated, said racially discriminatory admission or transfer plan

or policy, basing assignments, re-assignments, transfers or any other conditions of school enrollment on the race of the student, the race or racial proportion or character of other students in the neighborhood, school zone or school, the race or racial proportion or character of the school faculty, the previous or present racial designation or character of the school, or any other racial factor; and further enjoining said defendants enforcing said racial school zone lines, or from making any distinction whatsoever based upon race in making or administering student assignments, reassignments or transfers in the desegregated grades in said school system.

4. That defendants be required to prepare and file with the Court within a reasonable time a new zoning plan for all of the schools of Jackson, Tennessee, which shall not be racially gerrymandered or designed to perpetuate or preserve segregation in the schools in said school system, and which shall follow natural topographical boundaries and establish geographical zones according to the capacities of the school buildings and residential proximity to the schools rather than the racial character of the zones.

5. That as now shown to be an essential for proper implementation of the desegregation plan approved by the Court, and of plaintiffs' constitutional rights, the defendants be permanently enjoined from assigning, employing or treating or dealing with teachers and principals in the City Schools on the basis of the race of the teacher or principal and/or of the students assigned or to be assigned, or on the basis of the previous or present racial character or designation of any school or on any basis whatsoever predicated on race.

Motion for Further Relief and to Add Parties as Additional and/or Intervening Plaintiffs

6. That the Court award reasonable fees to plaintiffs' attorneys for their services rendered to them, including the intervening and/or additional plaintiffs, in this cause, and allow plaintiffs their reasonable costs and grant such further, other, additional or alternative relief as may appear to the Court to be equitable and just.

Z. Alexander Looby
Avon N. Williams, Jr.
327 Charlotte Avenue
Nashville, Tennessee 37201

J. Emmett Ballard
116 West Lafayette
Jackson, Tennessee

Jack Greenberg
Constance Baker Motley
James M. Nabrit, III
10 Columbus Circle, Suite 2030
New York, New York 10019

By /s/ Avon N. Williams, Jr.
Avon N. Williams, Jr.

/s/ J. Emmett Ballard
Emmett Ballard

Attorneys for original Plaintiffs and for intervening and/or additional Plaintiffs

Motion for Further Relief and to Add Parties as Additional and/or Intervening Plaintiffs

NOTICE TO DEFENDANTS:

Take notice that we shall bring the foregoing Motion for Further Relief and To Add Parties as Additional and/or Intervening Plaintiffs on for hearing before the Honorable Bailey Brown, United States District Judge, in his Courtroom in the United States Courthouse at Memphis, Tennessee on Friday, 11 September 1964 at 10:00 A. M. or as soon thereafter as same may be reached upon the docket of said Court.

This 3rd day of September, 1964.

/s/ AVON N. WILLIAMS, JR.
AVON N. WILLIAMS, JR.
One of the Attorneys for original Plaintiffs and for intervening and/or additional Plaintiffs.

Exhibit "K" Annexed to Foregoing Motion

(Affidavit of Thomas B. Davis)

STATE OF TENNESSEE
COUNTY OF MADISON

Thomas B. Davis, after being duly sworn according to law, deposes and says:

That he is and has been for several years a resident of Madison County, Tennessee, residing at 233 First Street, Jackson, Tennessee, and is the father of Gwendolyn F. Davis, age 10, who is a student in the sixth grade enrolled in the public schools of Jackson, Tennessee. That in the past Gwendolyn has been assigned to Washington-Douglass Elementary School, a formerly Negro School. That in order to reach said School, deponent's said child must traverse a dangerous area consisting of a junkyard, railroad tracks and other obstacles constituting a hazard and in addition said school is approximately eight blocks from his residence, while Parkview Elementary School, a formerly white school, is only approximately three blocks from his residence and entails none of these hazards enroute to school. This year Gwendolyn is covered by the City desegregation plan, but instead of being zoned in the school closest to her residence, Parkview, she is zoned for Washington-Douglass School. Because of said hazards and hardships, deponent presented and registered her at Parkview School on or about 19 August 1964. On 29 August 1964, just two days before the opening of school on Monday, 31 August 1964, deponent received a written communication from C. J. Huckaba, Jackson City School Superintendent, reassigning his said child to Washington-Douglass School. Deponent avers that no white child, either in the first grade or otherwise, residing in the zone

Exhibit "K" Annexed to Foregoing Motion

of any formerly Negro School in the City of Jackson has been refused registration in some white school outside the zone of said Negro Schools. All Negro Schools in the City of Jackson remain Negro in all respects. Deponent therefore avers that said refusal to admit his child to Parkview Elementary School unlawfully discriminated against his child because of her race or color and was done because of her race or color. He avers that approximately nine Negro children sought registration at Parkview, including his said child, and that only one of said Negro children was permitted to attend there whereas all white children in similar circumstances were admitted to this and other white schools, as aforesaid, without exception.

Further deponent saith not.

SIGNED: /s/ THOMAS B. DAVIS

Sworn to and subscribed before me
this 2d day of September, 1964.

/s/ J. EMMETT BALLARD
Notary Public
My Commission Expires: 4-18-67

(SEAL)

Exhibit "L" Annexed to Foregoing Affidavit

(Affidavit of Mrs. Freddie Moore)

STATE OF TENNESSEE
COUNTY OF MADISON

Mrs. Freddie Moore, after being duly sworn according to law, deposes and says:

That she is and has been for several years a resident of Madison County, Tennessee, residing at 118 Elm Street, Jackson, Tennessee, and is the mother of Terry Lee Morrow, age 12, who is enrolled in the sixth grade of the public schools of Jackson, Tennessee. That when said school system was desegregated said child was attending South Jackson Elementary School, being the Negro School to which he was assigned. This year he is covered by the desegregation plan and, although zoned for South Jackson School deponent, on 19 August 1964 presented and registered him at Alexander Elementary School, a formerly white school which is only approximately five blocks from her residence and in the same neighborhood, while South Jackson Elementary School is all the way accross town, many blocks away requiring said child walking to school to traverse many busy and dangerous street and railroad crossings and other hazards. That on or about 29 August 1964, approximately two days' before the opening of school on Monday, 31 August 1964, deponent received a letter from C. J. Huckaba, Jackson City Superintendent of Schools, advising her that her said child was assigned to South Jackson School. Deponent was not therein advised as to the reason for said assignment. Deponent avers that no white child, either in the first grade or otherwise, residing in the zone or neighborhood of any formerly Negro School in the City of Jackson has

Exhibit "L" Annexed to Foregoing Motion

been refused registration in some white school outside the zone of said Negro Schools. All Negro Schools in the City of Jackson remain Negro in all respects. Deponent therefore avers that said refusal to admit her child to Alexander Elementary School unlawfully discriminated against her child because of her race or color and was done because of her race or color. That to the best of deponent's knowledge, all white children who sought admission to formerly white schools under such circumstances were admitted.

Further deponent saith not.

SIGNED: /s/ MRS. FREDDIE MOORE

Sworn to and subscribed before me
this 1st day of September, 1964.

/s/ J. EMMETT BALLARD
Notary Public
My Commission Expires: 4-18-64

(SEAL)

Exhibit "M" Annexed to Foregoing Motion

(Affidavit of Mrs. Carl Brown)

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Mrs. Carl Brown, after being duly sworn according to law, deposes and says:

That she is and has been for several years a resident of Madison County, Tennessee, residing at 134 Prince Edward Street, Jackson, Tennessee, and is the mother of Carlin Anita Brown, age 8, who is enrolled in the third grade of the public schools of Jackson, Tennessee. That when said school system was desegregated said child was attending South Jackson Elementary School, being the Negro School to which she was assigned. This year she is covered by the desegregation plan and, although zoned for South Jackson School deponent, on 19 August 1964 presented and registered her at Alexander Elementary School, a formerly white school which is only approximately five blocks from her residence and in the same neighborhood, while South Jackson Elementary School is all the way across town, many blocks away, requiring said child walking to school to traverse many busy and dangerous street and railroad crossings and other hazards. That on or about 29 August 1964, approximately two days before the opening of school on Monday, 31 August 1964, deponent received a letter from C. J. Huckaba, Jackson City Superintendent of Schools, advising her that her said child was assigned to South Jackson School. Deponent was not therein advised as to the reason for said assignment. Deponent avers that no white child, either in the first grade or otherwise, residing in the zone or neighborhood of any formerly

Exhibit "M" Annexed to Foregoing Motion

Negro School in the City of Jackson has been refused registration in some white school outside the zone of said Negro Schools. All Negro Schools in the City of Jackson remain Negro in all respects. Deponent therefore avers that said refusal to admit her child to Alexander Elementary School unlawfully discriminated against her child because of her race or color and was done because of her race or color. That to the best of deponent's knowledge, all white children who sought admission to formerly white schools in said school system under such circumstances were admitted.

Further deponent saith not.

SIGNED: /s/ MRS. CARL BROWN

Sworn to and subscribed before me
this 1st day of September, 1964.

/s/ J. EMMETT BALLARD
Notary Public
My Commission Expires: 4-18-67

(SEAL)

Exhibit "N" Annexed to Foregoing Motion

(Affidavit of Mrs. Annie L. Merriweather)

STATE OF TENNESSEE
COUNTY OF MADISON

Mrs. Annie L. Merriweather, after being duly sworn according to law, deposes and says:

That she is and has been for some years a resident of Madison County, Tennessee, residing at 331 Lane Avenue, Jackson, Tennessee, and is the mother of Michael L. Merriweather, age 8, grade 3, and Emma Merriweather, age 10, grade 5, who are enrolled in the public schools of Jackson, Tennessee. That she and her children returned to Jackson in May, 1963, from a tour of overseas duty with her husband, who was in the Armed Forces. That she resides approximately two blocks from Alexander Elementary School, which is easily accessible and in her immediate neighborhood, while Lincoln Elementary School is approximately seven blocks away and requires the crossing of a dangerous railroad crossing. Accordingly, in June, 1963, she sought to register both of her said children in Alexander Elementary School. Michael was accepted but Emma was denied admission by the school authorities on the ground that, being in the fourth grade, she must attend a segregated school. Thereupon deponent enrolled Emma in Washington-Douglass Elementary School, a Negro school, because she could obtain a ride to that school with a friend. In August, 1964, on the appropriate day, deponent again presented both Michael and Emma at Alexander Elementary School and registered them there. On or about 29 August 1964, two days before the opening of school, on Monday, 31 August 1964, deponent received a letter from C. J. Huckaba, Jackson City Superintendent

Exhibit "N" Annexed to Foregoing Motion

of Schools, advising her that Michael was assigned to Alexander Elementary School, but that Emma, who is now covered by the desegregation plan, was nevertheless refused assignment there and was assigned to Lincoln Elementary School. No reason was given for said assignment of Emma to Lincoln School. Deponent avers that no white child, either in the first grade or otherwise, residing in the zone or neighborhood of any formerly Negro school in the City of Jackson has been refused registration in some white school outside the zone of said Negro schools, to the best of her knowledge and belief. All Negro schools in the City of Jackson remain Negro in all respects. Deponent, therefore, avers that said refusal to admit her said child to Alexander Elementary School unlawfully discriminated against her said child, Emma Merriweather, who was so refused admission, and was done because of her race or color. That to the best of deponent's knowledge, all white children who sought admission to formerly white schools in said school system under such circumstances were admitted.

Further deponent saith not.

SIGNED: /s/ MRS. ANNIE L. MERRIWEATHER

Subscribed and sworn to before me
this 1st day of September, 1964.

/s/ J. EMMETT BALLARD
Notary Public
My Commission Expires April 18, 1967.

(SEAL)

Replication of Defendants to "Motion for Further Relief"

Filed September 14, 1964

[Caption Omitted]

First Defense

All questions presented in said motion directed to the legality of the Desegregation Plan and Districting Plan of The City of Jackson have been fully ajudicated by this Court after regular hearing and are now res ajudicata. This is the second such motion filed by Plaintiffs seeking in this fashion to reopen an ajudicated question. Plaintiffs perfected an appeal on these questions to the Sixth Circuit Court of Appeals and then withdrew such appeal prior to hearing. Plaintiffs have therefore had every legal remedy available to them to question such plans and have allowed them to expire. Since there must be an end somewhere to all litigation, such portions of plaintiff's motion directed to the City of Jackson Desegregation Plan and Zoning Plan should be stricken from this proceeding and Defendants so move.

Second Defense

Pursuant to the order of this Court approving a Desegregation Plan for the school system of the City of Jackson, the Board of Commissioners of the City of Jackson adopted a transfer plan as submitted to this Court with its plan of desegregation.

Defendants would show unto the Court that the provisions of the Tennessee Pupil Assignment Law TCA 49-1748 et seq. relating to transfer are as follows:

Replication of Defendants to "Motion for Further Relief"

"*49-1748. Dissatisfaction with assignment—Application for hearing on transfer.*—Both parents, if living, or the parent, guardian or legal custodian of any child so assigned who is dissatisfied with the assignment of such child may, within ten (10) days of the order making said assignment, make written application to the board for a hearing before the board as to the reasonableness of said assignment and asking for a transfer to another school. Said application for transfer shall state the specific reasons why the applicant contends that the child should not attend the school assigned and the specific reasons why the child should be assigned to the different school named in the application. Upon the receipt of such application for hearing, the board shall set a date for the hearing of the protest and such hearing shall be held within a reasonable time after receipt of the written application for the hearing. Written notice of the date and place of the hearing shall be given by the board or its secretary to the parents, guardian or legal custodian of such child by mailing a notice of hearing to said party at his last known mailing address at least ten (10) days before the date of the hearing. The applicant shall be entitled to appear in his own behalf or to be represented by counsel upon the hearing of such protest.

"*49-1749. Decision of board on protest—Written order.*—The board shall consider and decide each individual case separately on its merits; and its decision shall be based upon a consideration of the factors set forth in Sec. 49-1742. Within a reasonable time after the completion of the hearing, the board shall enter a written order either granting or denying the

protest. A copy of the order and the findings of the board shall be mailed by the board or its secretary to all parties appearing at the hearing at their last known mailing address within five (5) days from the date of such order."

Defendants would show unto the Court that not a single appeal has been filed by the named plaintiffs, those seeking to intervene, or any member of the class they claim to represent with the Board of Commissioners or the Commissioner of Education and therefore Plaintiffs have failed to exercise or exhaust the administrative remedy and appeal available to them and this action should be dismissed as premature and defendants so move.

This transfer plan provides among other things:

"5. New students, otherwise eligible, living within the Corporate Limits of the City of Jackson entering the City Schools for the first time in a grade desegregated under this plan, may register at the school of their choice even though such school may be outside the district area in which said student lives. The Superintendent will then make assignment on the basis of districts set up in accordance with Paragraph 2. However, the Superintendent may, if sufficient facilities exist, at his option, assign said pupil to the school selected by the student. New students living outside the corporate limits of The City of Jackson desiring to enter a City School for the first time in a grade desegregated under this plan may, if otherwise eligible, attend city schools until further notice but only on condition that such student agree to accept assignment by Superintendent of Schools to a school for the convenience of the City School System.

Replication of Defendants to "Motion for Further Relief"

"6. (a) The Superintendent of Schools shall have the right to grant, or require, transfer in any individual case where necessary for obtaining maximum economy and efficiency of school facilities and personnel, considering, among other things, school capacity, class room capacity, central facilities capacity, teacher-pupil ratio, grade load, or for the accomplishment of any other purpose of this plan.

(b) The Superintendent shall further have the right to grant, or require, individual transfer where such transfer is necessary for the attainment of the best possible education by the individual.

(c) Any student may, for reasons satisfactory to such student and his or her parents, apply for a transfer to any other school in the City School System for which said student is otherwise eligible to attend and the Superintendent of Schools may, if sufficient space and other facilities exist in the school to which the transfer is requested, grant such application at his option and as the best interest of the City School System may appear to the Superintendent of Schools. Transfer during a school semester however is discouraged and such transfers will be granted only because of unusual circumstances and for good causes shown.

(d) All assignments, transfer or re-location of pupils will be in accordance with the Tennessee Pupil Assignment Law and appropriate regulations of the School Department."

Replication of Defendants to "Motion for Further Relief"

THIRD DEFENSE

Defendants would show unto the Court that in not a single instance do the Plaintiffs charge defendants with violating the provisions of the Desegregation Plan and Districting approved by this Court but instead reflect a dissatisfaction with the plan. For example:

Gooch child lives in South Jackson zone and was assigned to South Jackson. *Ex. A.* This child is actually named Ewings and her parents live at 121 Elm, also in the South Jackson District. Alice Gooch is grandmother.

Porter child lives in Lincoln district and was assigned to Lincoln School. *Ex. B.*

Lyons child lives in Washington-Douglass District and was assigned to Washington-Douglass. *Ex. B.*

Ledbetter child lives in South Jackson district and was assigned to South Jackson. *Ex. B.*

Davis child lives in South Jackson District and was assigned to South Jackson. *Ex. B.*

Morrow child lives in South Jackson District and was assigned to South Jackson. *Ex. B.*

White child lives in South Jackson District and was assigned to South Jackson. *Ex. B.*

Robinson child lives in South Jackson and was assigned to South Jackson. *Ex. B.*

Sorrells children live in South Jackson District and were assigned to South Jackson. *Ex. C.*

Glenn children live in South Jackson District but attended Lincoln prior to desegregation plan. These children

were given their choice of either of these two schools as required by the plan of desegregation. *Ex. D.*

Golden child lives in South Jackson District but attended Washington-Douglass prior to desegregation plan. This child was given a choice of either school. *Ex. E.*

Robinson child lives in South Jackson District but attended Lincoln prior to desegregation plan. This child was given a choice of either school. *Ex. F.*

Ledbetter child lives in South Jackson District but attended Lincoln prior to desegregation plan. This child was given a choice of either school. *Ex. G.*

Fisher children live in Lincoln District and were assigned to Lincoln. *Ex. H.*

Harris child lives in Lincoln District and was assigned to Lincoln School. *Ex. I.*

Merriweather child lives in Lincoln District and was assigned to Lincoln. *Ex. J.*

Davis child lives in Washington-Douglass District and was assigned to Washington-Douglass. *Ex. K.*

Moore child lives in South Jackson District and was assigned to South Jackson. *Ex. L.*

Brown child lives in South Jackson District and was assigned to South Jackson. *Ex. M.*

Merriweather child lives in Lincoln District and was assigned to Lincoln. The child Michael was enrolled in 1963 by principal error in Alexander as a student living within the Alexander District. When the error in residence was discovered the child Michael was allowed to continue in Alexander in 1963 and again in 1964. *Ex. N.*

Replication of Defendants to "Motion for Further Relief"

Each and every assignment complianed of was and is in exact conformity to the plan of desegregation heretofore approved by this Court.

Defendants further would show unto the Court that on August 16, 1964, a two page advertisement was published in The Jackson Sun, a newspaper of local circulation in Jackson, Tennessee, setting forth the Zoning Map and the plan approved by this Court for desegregation of City Schools and establishing a registration date for elementary grades as follows:

1st grade—August 18th
2-6 grade—August 19th-20th

In this registration a total of 280 requests for transfer were received. Of this total there were 63 applications for transfer to schools outside the district in which they live submitted by negro students, including plaintiffs, as follows:

	Applied	*Granted*
Alexander	35	6
Whitehall	11	4
Lincoln	—	–
Washington-Douglass	—	–
Parkview	9	1
South Jackson	—	–
West Jackson	8	5
Highland Park	0	–

Plaintiffs single out Parkview, Alexander and Whitehall and Defendant submits the following:

ALEXANDER SCHOOL

		White	*Negro*
Total students 1963-64	693	661	32
1964-65	652	565	87

Replication of Defendants to "Motion for Further Relief"

WHITEHALL SCHOOL

		White	*Negro*
Total students 1963-64	266	262	4
1964-65	306	290	16

PARKVIEW SCHOOL

		White	*Negro*
Total students 1963-64	587	587	–
1964-65	602	601	1

School capacity and class load compels consideration in such transfer handling as well as other factors and present load for schools and classes within schools is as follows:

WASHINGTON-DOUGLASS ELEMENTARY SCHOOL

1st Grade — 1 — 30
1 — 30

2nd Grade — 1 — 25 (1 & 2)
1 — 33
1 — 34

3rd Grade — 1 — 29
1 — 29

4th Grade — 1 — 34
1 — 34

5th Grade — 1 — 31
1 — 31

6th Grade — 1 — 31
1 — 31

13 Classroom teachers

1 librarian

Replication of Defendants to "Motion for Further Relief"

WASHINGTON-DOUGLASS ELEMENTARY SCHOOL

1 Multiple Handicapped

1 Principal

Total 16

Enrollment 402

Capacity 525

1 Audio-visual room

1 Remedial reading room

WEST JACKSON ELEMENTARY SCHOOL

1st Grade — 1 — 35
1 — 36

2nd Grade — 1 — 29 (1 & 2)
1 — 33
1 — 35

3rd Grade — 1 — 39
1 — 30 (3 & 4)

4th Grade — 1 — 40
1 — 31 (4 & 5)

5th Grade — 1 — 40

6th Grade — 1 — 31
1 — 30

12 Classroom teachers

1 Remedial Reading

1 Librarian

1 Principal

Capacity — 500

Enrollment 409

Replication of Defendants to "Motion for Further Relief"

SOUTH JACKSON ELEMENTARY SCHOOL

1st Grade — 1 — 38
1 — 38
1 — 38

2nd Grade — 1 — 35
1 — 35
1 — 34

3rd Grade — 1 — 37
1 — 36

4th Grade — 1 — 29 (3 & 4)
1 — 36
1 — 36

5th Grade — 1 — 31
1 — 31
1 — 31

6th Grade — 1 — 30
1 — 29

16 Classroom teachers

1 Librarian

1 Principal

Total 18

Enrollment 544

Capacity 525

1 Remedial Reading room

Replication of Defendants to "Motion for Further Relief"

LINCOLN ELEMENTARY SCHOOL

1st Grade — 1 — 35
1 — 35
1 — 34

2nd Grade — 1 — 28 (1 & 2)
1 — 35
1 — 35
1 — 35

3rd Grade — 1 — 33
1 — 33
1 — 33

4th Grade — 1 — 28 (3 & 4)
1 — 31
1 — 31
1 — 31

5th Grade — 1 — 33
1 — 33
1 — 34

6th Grade — 1 — 35
1 — 35
1 — 35

20 Classroom teachers

1 E.M.R.

1 Librarian

1 Principal

1 Remedial reading

Total 24

Enrollment 672

Capacity 875

1 Audio-visual room

Replication of Defendants to "Motion for Further Relief"

WHITEHALL ELEMENTARY SCHOOL

1st Grade — 1 — 40
1 — 29 (1 & 2)

2nd Grade — 1 — 38

3rd Grade — 1 — 39
1 — 28 (4 & 3)

4th Grade — 1 — 37

5th Grade — 1 — 35
1 — 25 (5 & 6)

6th Grade — 1 — 34

Classroom teachers 9

Librarian 1

Principal 1

Remedial Reading 1

Capacity 315

Enrollment 306

ALEXANDER ELEMENTARY SCHOOL

1st Grade — 1 — 34
1 — 34
1 — 33
1 — 26 (1 & 2)

2nd Grade — 1 — 35
1 — 35
1 — 34

3rd Grade — 1 — 32
1 — 31
1 — 33

Replication of Defendants to "Motion for Further Relief"

ALEXANDER ELEMENTARY SCHOOL

4th Grade — 1 — 33
1 — 32
1 — 31

5th Grade — 1 — 30
1 — 29
1 — 28
1 — 28

6th Grade — 1 — 38
1 — 39
1 — 37

Capacity 750

Enrollment 652

Classroom teachers 20

Remedial Reading 1

Librarian 1

Multiple Handicapped 1

Principal 1

Audio Visual 1

PARKVIEW ELEMENTARY SCHOOL

1st Grade — 1 — 34
1 — 34
1 — 34

2nd Grade — 1 — 28
1 — 29
1 — 29
1 — 28

Replication of Defendants to "Motion for Further Relief"

PARKVIEW ELEMENTARY SCHOOL

3rd Grade — 1 — 32
1 — 33
1 — 31

4th Grade — 1 — 31
1 — 30
1 — 30

5th Grade — 1 — 38
1 — 37
1 — 30 (5 & 6)

6th Grade — 1 — 37
1 — 37

Classroom teachers 18

Librarian 1

Remedial Reading 1

E.M.R. 1 (20)

Enrollment 602

Capacity 750

Audio-visual room 1

HIGHLAND PARK ELEMENTARY SCHOOL

1st Grade — 1 — 31
1 — 31
1 — 31

2nd Grade — 1 — 32
1 — 33
1 — 33

3rd Grade — 1 — 33
1 — 34
1 — 33

Replication of Defendants to "Motion for Further Relief"

HIGHLAND PARK ELEMENTARY SCHOOL

4th Grade — 1 — 36
1 — 35
1 — 29 (4 & 5)

5th Grade — 1 — 36
1 — 36
1 — 28 (5 & 6)

6th Grade — 1 — 36
1 — 35

Classroom teachers 17

Librarian 1

Remedial Reading 1

Principal 1

Enrollment 562

Capacity — 700 (after addition of four class rooms under construction)

FOURTH DEFENSE

The motion of plaintiffs contains prayers for relief which are in truth prayers for compulsory integration, rather than elimination of compulsory segregation based on race. Defendants are informed such is not required by the Constitution of the United States nor any interpretation thereof and that same should be denied.

FIFTH DEFENSE

Defendants respectfully submit that the question of faculty integration is presently under advisement by this Court, that the present usage of faculty is dictated by the requirements of giving the best possible education to the

greatest number of children within the system, that the present faculty assignment has no effect whatever on the question of desegregation, registration being accomplished primarily by the principal of each school personally with a few assistants, the greatest part of the faculty having no association with registration at all; that all such principals are instructed to and have applied the plan in completely neutral fashion and defendants submit that no complaint to the contrary has been registered in the motion filed against it; that the destruction of the entire City School System is seeded in this request in such fashion as to be beyond the control of defendant officers, not from violence but from student withdrawal, to the overwhelming damage of all students, a result wholly unnecessary to achieve the elimination of compulsory segregation based on race.

SIXTH DEFENSE

Defendants would show unto the Court that the real plaintiff in this proceeding is the National Association for the Advancement of Colored People, to the best of defendant's knowledge an unincorporated association with headquarters in New York City; that such real plaintiff has a staff of attorneys on salary or fixed fee, including the Counsel appearing in this cause; defendants allege on belief that no named nominal plaintiff has been required to pay anything to counsel; that some of intervenors are themselves officers of the National Association for the Advancement of Colored People and have actively worked for months to secure enough individuals willing to allow their children and their names to be used to create the conditions here complained of; that therefore plaintiffs

are not entitled to attorney's fees in this cause and same should be disallowed.

And now having fully replied to the motion filed against defendants, a motion in name only but actually an effort to set aside this entire proceeding and re-try same, defendants move for the dismissal of such motion at the cost of plaintiffs.

/s/ RUSSELL RICE
RUSSELL RICE
Attorney for Defendants
215 East Main Street
Jackson, Tennessee

Pre-Trial Order

Filed September 28, 1964

[Caption Omitted]

A pre-trial conference was held in Memphis in connection with the motion of plaintiffs for further relief and the motion of additional parties to intervene filed on September 4, 1964, and after argument and statements of counsel,

It is ORDERED:

1. The motion of additional parties to intervene is granted.

2. Plaintiffs are entitled to reopen the question as to whether the unitary zones applicable to desegregated grades in elementary schools have been gerrymandered to prevent the abolition of discrimination based on race or color.

3. Plaintiffs are entitled, in connection with their gerrymandering contention and their contention that assignments and transfers are not being handled on a nondiscriminatory basis, to review all registration, assignment and transfer records of the elementary schools for the school years 1963-64 and 1964-65. The parties will exchange their summaries of the information contained in these records in an effort to stipulate what these records in general reflect.

4. Plaintiffs will, after having received these records and prior to the next hearing, determine what school personnel should be subpoenaed for the hearing, keeping

the number to the minimum necessary to support their position, and the Court will then hear any motions to quash subpoenas, if any.

5. The Court will rule on the motion to desegregate faculties at the next hearing.

6. The verbal motion to strike parts of defendants' reply having to do with the right of plaintiffs to recover attorneys' fees is overruled, subject to the right to plaintiffs to renew the motion at a later time.

ENTER this 28th day of September, 1964.

/s/ BAILEY BROWN
United States District Judge

Supplemental Replication to Motion of September 4, 1964

Filed November 13, 1964

[Caption Omitted]

Defendants submit this supplemental replication in order to bring clearly into focus the issues set up by the Pre-Trial Order of the Court filed September 28, 1964.

I.

Defendants deny that the unitary zones established for the elementary schools of The City of Jackson have been "gerrymandered" for any purpose.

II.

Defendants deny that the transfer plan adopted by it is discriminatory or that same is "not being handled on a non-discriminating basis."

III.

Defendants categorically deny all other allegations contained in the September 4, 1964 motion except as may be admitted hereafter.

IV.

Now replying directly to the questions of assignment and transfer defendants say:

1. That the transfer plan speaks for itself and that by its terms is neither discriminatory nor unduly cumbersome, meeting all requirements of the Constitution of the United States and all interpretations thereof.

2. That the actual application of the transfer plan is as follows:

a. A student—*any* student—may register at the school of his choice. All that present themselves are accepted.

b. A student—*any* student—living in the unitary zone of the school at which they register is registered on a white card by the principal and this student is accepted into such school without further handling and as a matter of right.

c. A student—*any* student—living outside the unitary zone of the school at which they register is registered on a red card by the principal and this coded (red) card is then sent to the central school office for approval or disapproval by the Superintendent. If approved by the Superintendent the student is granted the transfer and allowed to enter the school at which he registered. If disapproved by the Superintendent, the student is assigned to the school of the district in which he lives or, in case the student was enrolled in some other school the previous year, is given a choice of his district school or the school attended the previous year. In either case the parent is notified by mail.

d. Any county student—*any* student—may likewise register at the school of their choice where a yellow code card is used. All such cards are sent to the Central Office where the students are assigned on the basis of best advantage to the system, such as class and school load, etc.

e. A student—*any* student—granted transfer to a school in 1963-64 is treated the same as a student living in that district in 1964-65. Transfers are discouraged but when granted are allowed to continue so long as some other

student living in that same zone be not displaced thereby. The moving of students each year is not conducive to the maximum achievement of the student in studies and produces social, emotional and disciplinary problems. Therefore a transfer once made is honored as long as no one else is deprived of a right thereby.

f. Any white student and any negro student living in the unitary zone of a school made up altogether, or primarily, of members of the opposite race are *permitted, if they voluntarily request it,* to transfer into a school composed primarily, or altogether, of members of their own race. *There is absolutely nothing compulsory about this.* This transfer is granted without exception to white and negro students alike but the allegation that white children are allowed to transfer to any school at will under these, or any other circumstances, is denied. To *compel* a student to attend against his will a school comprised altogether, or predominantly, of students of the other race will, in the present state of society in this area, place such student up against emotional, social and psychological factors destructive of the educable potential of such child and potentially dangerous to the general well being and the emotional and psychological development of the child.

g. Transfers during the 1964-65 year were handled as follows: (up to and including September 4, 1964)

Supplemental Replication to Motion of September 4, 1964

CITY OF JACKSON
SCHOOL DEPARTMENT
1964-65

Analysis of Registration by Students Living Outside the Unitary Zone of the School of Registration for Grades 1-6 Inclusive, Showing Disposition of Same by School Superintendent in the Granting or Denying Transfer.

Alexander

71 students presented themselves for registration. All were registered.

35 of the 71 were of the negro race.

36 of the 71 were of the white race.

6 negro children living on the border street were granted transfers to Alexander.

11 negro children living in South Jackson district were denied transfer and assigned to South Jackson.

9 negro children living outside the Alexander area were denied transfer and were given a choice of either South Jackson or Lincoln, the school of last attendance or of their residence.

8 negro children living in the Lincoln District were denied transfer and were assigned to Lincoln.

1 negro child was denied transfer and given a choice of Washington-Douglass or of South Jackson, the district of last attendance or of residence.

6 white children living in West Jackson District were denied transfer and assigned to West Jackson, the district of residence.

2 white children were granted transfer because they live on border street.

1 white child was granted transfer because mother teaches at Alexander.

12 white children were granted transfer because of brothers or sisters already attending and eligible to continue to attend Alexander under the plan.

14 white children were denied transfer and assigned to other schools on a class balancing basis.

1 white child denied transfer and assigned to Whitehall.

West Jackson

76 students presented themselves for registration. All were registered.

8 of the 76 were of the negro race.

5 negro children were granted transfer because of boundary line proximity and class balancing basis.

3 negro children applied late but were denied transfer and assigned to South Jackson, the zone of residence.

25 white children from other areas were granted transfer for class balancing and better use of school capacity.

2 white children granted transfer whose mother teaches at West Jackson.

2 white children granted transfer from Highland Park area because of family moving.

7 white children denied transfer and assigned to Alexander, the zone of residence.

1 white child denied transfer and assigned to Highland Park, the zone of residence.

31 white students from county assigned to West Jackson to obtain maximum use of school capacity and balance classes.

1 white student from county denied admission and assigned to Whitehall to balance class load.

Parkview

61 students presented themselves for registration. All were registered.

9 of the 61 were of the negro race.

52 of the 61 were white.

1 negro student was granted transfer because of residence.

8 negro children were denied transfer and assigned to Washington-Douglass, the zone of residence.

9 white children denied transfer and assigned to Whitehall, zone of residence.

42 white children granted transfer because of load and class balance.

1 white child granted transfer for EMR class reasons.

Whitehall

25 children presented themselves for registration and all were registered.

11 of the 25 were of the negro race.

4 negro children were granted transfer because of proximity to border of zone.

Supplemental Replication to Motion of September 4, 1964

7 negro children were denied transfer and assigned to Lincoln (6) or Washington-Douglass (1), the zone of residence.

14 white children were granted transfer.

Highland Park

17 applied

no negro children involved

No transfers were granted and all were assigned to zone of residence if living in City. 5 County resident students were assigned to West Jackson.

Lincoln

5 children presented themselves for registration. All were negro. All were registered.

2 children were granted transfer as one of the school teachers is responsible for them.

2 children were denied transfer and assigned to South Jackson, zone of residence.

1 child given choice of Lincoln or South Jackson.

Washington-Douglass

3 children presented themselves for registration. All were registered. All were negro.

1 granted transfer as mother teaches in school.

2 assigned from County.

South Jackson

22 children presented themselves for registration. All were registered. All were negro.

15 negro children were denied transfer and assigned to Washington-Douglass, the zone of residence.

1 negro child granted transfer.

5 county children assigned to South Jackson.

1 negro child living in South Jackson District enrolled there and then sought transfer to Washington-Douglass. Denied.

In connection with all schools and all students, a student granted a transfer in 1963-64 school year was treated in 1964-65 the same as a student living in the zone of the school to which transferred, provided no student actually living in the zone be displaced thereby. Transfers were and are discouraged but when granted the student is allowed to continue in the school to which transferred as nearly as is permissable under all pertinent factors. Moving of children from school to school yearly is not conducive to maximum educational achievement by such student.

h. Number of appeals to the Board of Education from or by parents or students dissatisfied with transfer or assignment for the 1963-64 or the 1964-65 school year, none

V.

Replying directly to the allegations relating to integration of faculty defendants say:

a. The integration of the faculty is not related to nor necessary for the achievement of elimination of compulsory segregation within the City Schools of the City of Jackson.

b. The elimination of compulsory segregation within the first six grades of the City Schools of The City of Jackson is an accomplished fact, without necessity of faculty integration.

c. The Constitution of the United States of America does not require nor authorize the Federal Courts to assign by order the personnel of the City School Department of The City of Jackson and indeed would itself be a violation of such Constitution.

d. The case of *Sloan* v. *Tenth School District* (Ex. "A" to Motion of Plaintiff) involves a situation in which the job security of negro teachers was threatened, a question not involved in this proceeding. The Court also makes reference to testimony of Dr. Eugene Weinstein, a sociologist, that in his opinion faculty segregation tended to "discourage" school selection by a student if the faculty be of the opposite race. Such situation, even if true in Nashville and even if of any relevancy in that case, is not true here where the only persons asking this Court for relief are members of the negro race who are making the biggest complaint that negro children cannot get into schools staffed by white teachers fast enough. Obviously such segregation of faculty is no deterrent to plaintiffs in the case before the Court.

VI.

Replying directly to plaintiff's claim for allowance of attorney fees, defendants recognize the question to be within the discretion of the Court giving due consideration to all relevant factors.

The case of *Bell* v. *School Board, etc.* 321 F(2) 494 (4th Circuit) is not comparable to any degree with the instant

case. In the Bell Case the District Judge disallowed attorneys fees. The Fourth Circuit awarded such fees (Judges Hayneworth and Boreman dissenting) on the basis of a long pattern of evasion and obstruction including not only taking no initiative but interposing a variety of administrative obstacles to thwart plaintiffs in the case. The 4th Circuit called it an "extreme" case.

The City of Jackson not only took initiative but has and is living up to the letter and intent of the order of this Court with high quality good faith, that all allegations to the contrary are mere allegations and this defendant demands strict proof of same.

/s/ RUSSELL RICE
Attorney for Defendants
215 East Main Street
Jackson, Tennessee

STATE OF TENNESSEE
COUNTY OF MADISON

C. J. Huckaba, being duly sworn makes oath that he is the Superintendent of Schools for The City of Jackson, Tennessee School Department and that the foregoing statements of fact are true to the best of his knowledge and belief.

/s/ C. J. HUCKABA
C. J. Huckaba

Sworn to and subscribed before me this 12th day of November 1964.

/s/ PATSY SANFORD
Notary Public

My commission expires:
Oct. 22, 1968.

Petition

Filed November 13, 1964

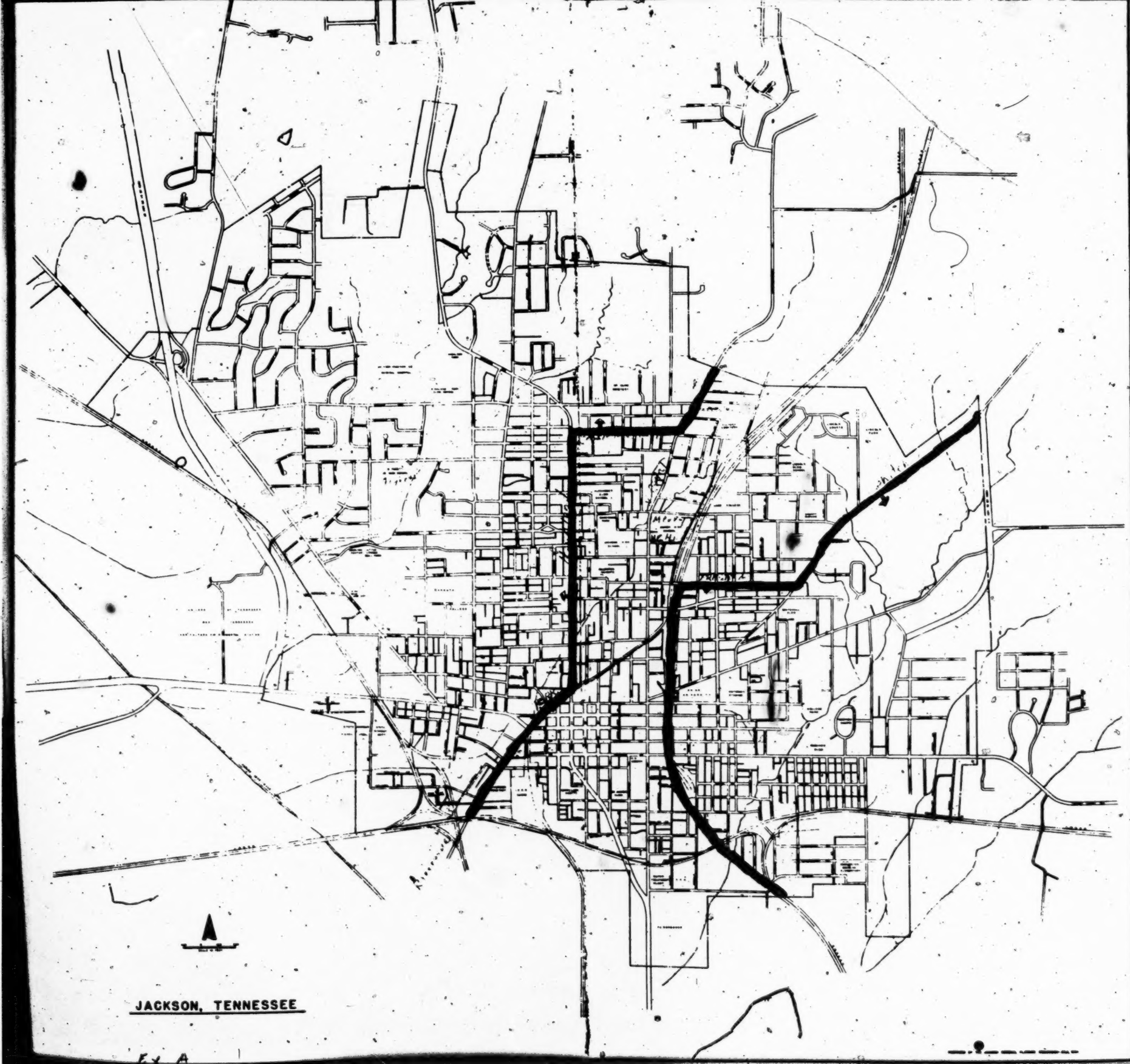
[Caption Omitted]

Come now the Defendants Board of Commissioners of The City of Jackson, Tennessee, et al., pursuant to Paragraph 5 of the Judgment of this Court filed August 20, 1963, and submit for the Court's approval a plan for unitary non-racial zones for the Junior High School System of The City of Jackson to be effective at the beginning of the fall term of the 1965-66 school year, this plan marked Exhibit A to this petition.

The Court is advised that Jackson Junior High School shown on the map is a new school just being completed which will be in use by the time this plan is effective. The present Jackson Junior High School located on Deaderick Avenue may be or may not be continued in service, a question not yet determined. The map as presented does not include it but may be amended later if the building is continued in service.

WHEREFORE, Petitioners pray the judgment of this Court approving such plan.

/s/ RUSSELL RICE
RUSSELL RICE
Attorney for Defendants
215 East Main Street
Jackson, Tennessee



JACKSON, TENNESSEE

Ex A

Specification of Objections Filed by the Plaintiffs to the Plan for Unitary Non-Racial Zones for the Junior High School System of the City of Jackson Filed by Defendants

Filed November 30, 1964

[Caption Omitted]

Come now the plaintiffs in the above cause, by their undersigned attorneys, and object to the plan for unitary non-racial zones for the Junior High School System of the City of Jackson filed by the defendants herein on or about the 14th day of November, 1964, upon the following grounds:

1. That the plan is not complete or final in that it states: "The present Jackson Junior High School located on Deaderick Avenue may or may not be continued in service, a question not yet determined."

2. The zoning plan for said junior high schools as shown on the map filed as Exhibit "A" to the petition filed by the defendants, and the zone lines therein drawn, were accomplished by defendants for the purpose of preserving segregation; said zoning lines were arbitrarily drawn without consideration for pertinent factors and were drawn for the purpose of defeating or hindering desegregation, in violation of the Fourteenth Amendment to the Constitution of the United States.

3. The defendants fail and are unable to carry their burden of proof to demonstrate that the zone lines of each school as shown in said plan were not drawn with a view to preserve a maximum amount of racial segregation; and

Specification of Objections Filed by the Plaintiffs to the Plan for Unitary Non-Racial Zones, etc.

to perpetuate or aid in perpetuating racial segregation in the junior high schools.

4. The said zoning lines for the junior high schools were manifestly gerrymandered so as to provide and maintain maximum racial segregation in the said junior high high schools in violation of the Fourteenth Amendment to the United States Constitution.

5. The new junior high school referred to in said zoning plan (Jackson Junior High School) as well as the recently constructed Tigrett Junior High School were geographically located by defendants for and with the purpose and effect under said zoning plan of providing and maintaining maximum racial segregation in the junior high schools in violation of the Fourteenth Amendment to the Constitution of the United States.

6. Said racially gerrymandered zoning plan in conjunction with the racially discriminatory assignment and transfer plan which has been adopted and enforced by the defendants in schools or grades desegregated under the desegregation plan in this case, tends to perpetuate segregation in the City School System of Jackson in violation of the Fourteenth Amendment to the Constitution of the United States. Said unconstitutional segregation and discrimination is further aided, accomplished, and perpetuated by defendants' continued practice and policy of maintaining racially segregated teacher and faculty assignment in the schools of Jackson.

WHEREFORE, PREMISES CONSIDERED, plaintiffs pray that said plan of non-racial unitary zones for junior high schools

Specification of Objections Filed by the Plaintiffs to the Plan for Unitary Non-Racial Zones, etc.

within the City of Jackson, proposed by the defendants in their aforesaid petition, be disapproved by the Court and that the defendants be required to present on or before the date heretofore specified by the Court a plan of unitary non-racial zones for the junior high schools of said City which shall not be gerrymandered according to race or designed or have the effect of preserving segregation to any extent and which shall be based on proper objective factors and criteria entirely unrelated to race.

Z. Alexander Looby
Avon N. Williams, Jr.
J. Emmett Ballard
Jack Greenberg
Constance Baker Motley
James M. Nabritt, III

By /s/ Avon N. Williams, Jr.
Avon N. Williams, Jr.

Attorneys for Plaintiffs.

Additional Motion for Further Relief Against the Defendant, Board of Commissioners of the City of Jackson, and C. J. Huckaba, City School Superintendent

Filed April 19, 1965

[Caption Omitted]

Plaintiffs, by their undersigned attorneys, in addition to their Motion for Further Relief and To Add Parties as Additional and/or Intervening Plaintiffs heretofore filed in this case in September, 1964, further move this Court for an order granting still further relief in this case. The further relief sought herein is an order directing defendants to:

(1) Accelerate desegregation in the City of Jackson School System to the end that complete desegregation may be effected by September, 1965;

(2) Eliminate all racial restrictions, distinctions, and discriminatory practives from all teacher in-service training and professional or school-related activities sponsored or supported by the City of Jackson School System; and

(3) Eliminate all racial restrictions, distinctions and discriminatory practices from all school-sponsored curricular and extra-curricular activities, including cultural and/or recreational programs conducted under the auspices of and/or with the direct or indirect support or cooperation of the City of Jackson School System; and

(4) Eliminate all other racial classifications and distinctions from the operation of the City of Jackson Public School System.

Additional Motion for Further Relief Against Defendants

In support of this additional motion, plaintiffs show unto this Court the following:

1. On 20 August 1963, this Court entered a judgment requiring desegregation of the public schools of the City of Jackson, Tennessee, within four years, encompassing the first three grades in the school year 1963-64, the next three grades in 1964-65, and two grades successively each school year thereafter until completed. Said judgment approved school zone lines established by defendants and approved an admission and transfer plan adopted by defendants. The Court held under advisement the claim of plaintiff for desegregation of teachers and principals pending the implementation of the plan.

2. On 4 September 1964, plaintiffs filed a Motion for Further Relief against the City School defendants praying for the additional intervention of additional plaintiffs, for injunctive relief against a racially discriminatory admission and transfer plan or policy operated by defendants, for relief against alleged gerrymandering of geographical school zone lines established by defendants, for injunctive relief requiring non-racial assignment and employment of teachers and other professional personnel in the City Schools, and for reasonable attorneys fees for plaintiffs' attorneys.

3. About 11 September 1964, defendants filed their Replication to said Motion for Further Relief and on 28 September 1964, following a Pre-trial Conference held in Memphis, this Court entered a Pre-trial Order granting the Motion for Additional Plaintiffs to Intervene, holding that plaintiffs are entitled to reopen the question of racial gerrymandering of school zones, holding that plain-

tiffs are entitled in connection with their gerrymandering contention and their contention that assignments and transfers are not being handled on a non-discriminatory basis, to review certain school records and directing the parties to exchange their summaries of the information contained in these records in an effort to prepare stipulations and to determine what school personnel should be subpoenaed for the hearing, deferring the Motion to Desegregate Faculties to the next hearing, and overruling the verbal Motion to Strike Parts of Defendants' Replication pertaining to the right of plaintiffs to recover attorneys fee subject to the right of plaintiffs to renew the motion at a later time.

4. On 12 November 1964, defendant City School officials filed a Supplemental Replication and a Motion to Consolidate its Petition for Approval of Non-Racial Unitary Zones for Junior High Schools with Plaintiffs Motion for Further Relief. This motion was granted, by consent of the plaintiffs, subject to the defendants making available to plaintiffs the same records relating to registration and assignment of pupils in the Junior High Schools that were made available for the Elementary Schools.

5. Said Motion for Further Relief filed by plaintiffs on 4 September 1964 is still pending awaiting the completion of the surveys of the records and compilation and exchange of data mentioned above prior to being set for hearing by the Court.

6. On or about 14 September 1964, after plaintiffs' said motion was filed, the defendants gave all white school teachers an in-service training day and allowed a holiday for all children enrolled in the formerly white schools of

the City of Jackson to attend the Madison County Fair. However all formerly Negro schools, which remain segregated completely with all Negro faculties and student bodies, were kept in session, the Negro teachers being assigned a separate in-service training day on September 25, and the Negro children enrolled in these Negro schools being denied the privilege of having said holiday to attend the County Fair. Negro parents, learning of this discrimination, kept their children out of school and sent them to the Fair along with the white children and the few Negro children attending formerly white schools. Defendants, City School officials, immediately took punitive action against each of said Negro school children enrolled in the all-Negro schools, placing them "on probation in the Jackson City School System for the remainder of the 1964-65 school year for taking part in an organized boycott of the City Schools on this date by failing to attend school." Several months elapsed before defendants, under pressure from Negro PTAs and other Negro civic groups in the community, finally withdrew this racially discriminatory punitive action against Negro school children.

7. Defendants in the current school year have introduced several new and important courses in modern education in formerly white schools of the Jackson School System which are denied to Negro school children. For instance, a "36-station language laboratory" was installed at Jackson High School to facilitate the learning of French and Spanish and a "newspaper in the classroom" program "to promote a more discriminating and purposeful reading of the newspaper with the end objective of providing better informed citizens in a free society" was in-

troduced in the seventh grade at Tigrett and Jackson Junior High Schools after the beginning of the school year in September, 1964, Negro school children who, according to the proof introduced by defendants on the original trial of this case in August, 1963, have lower achievement levels than white children and, therefore, manifestly need these modern educational and cultural programs even more than white children, were denied the privilege of attending these courses.

8. On 11 February 1965, the Jackson Symphony Orchestra gave concert performances in Tigrett Junior High School for the fourth, fifth and sixth grades of the Madison County Schools and the fifth and sixth grades of the City of Jackson Schools. Negro children enrolled in the all-Negro schools of said school systems were entirely excluded from this program, in accordance with defendants' general policy and practice of continued segregation and exclusion of Negroes in segregated Negro schools from cultural and other extra-curricular programs.

9. No administrative reasons are present justifying the continued deferral of immediate desegregation.

10. Continued segregation fosters and encourages the discriminatory restrictions and practices in faculty training and professional activities and in school-sponsored or school-supported curricular and extra curricular activities for students as set out hereinabove.

WHEREFORE, in addition to the relief sought in the said Motion for Further Relief heretofore filed on 4 September 1964, plaintiffs further pray for an order directing defendants to:

Additional Motion for Further Relief Against Defendants

1. Accelerate desegregation in the City of Jackson School System, to the end that complete desegregation may be affected by September, 1965;

2. Eliminate all racial restrictions, distinctions, and discriminatory practices from all teacher in-service training and professional or school-related activities sponsored or supported by the City of Jackson School System;

3. Eliminate all racial restrictions, distinctions and discriminatory practices from all school-sponsored curricular and extra-curricular activities, including cultural and/or recreational programs conducted under the auspices of and/or with the direct or indirect support or cooperation of the City of Jackson School System; and

4. Eliminate all other racial classifications and distinctions from the operation of the City of Jackson Public School System.

Z. Alexander Looby
Avon N. Williams, Jr.
327 Charlotte Avenue
Nashville, Tennessee 37201

J. Emmett Ballard
116 W. Lafayette Street
Jackson, Tennessee

Jack Greenberg
James N. Nabrit, III
Derrick A. Bell, Jr.
10 Columbus Circle
New York, New York 10019

By /s/ Avon N. Williams, Jr.
Avon N. Williams, Jr.

Attorneys for Plaintiffs

Replication of Defendant to Additional Motion for Further Relief

Filed May 18, 1965

[Caption Omitted]

Defendants, for replication to the Additional Motion for Further Relief filed against it in the name of the Plaintiffs says:

1. As to Paragraph 1-5 of the allegations of the Plaintiff, beginning on page two of their motion, the Defendants say that the record speaks for itself.

2. Replying to paragraph 6 in such motion, Defendant would show unto the Court that historically within Madison County, Tennessee, prior to 1964, two county fairs had operated within Madison County, an all-white fair known as the West Tennessee District Fair and an all-colored fair known as the West Tennessee A&M Fair; that historically within The City School System it had been the custom to designate one day during the white fair as an in-service date for training of teachers within white schools which served the double purpose of carrying on required in-service training and of allowing white children to attend the white fair. Similarly, it had been the custom to set a day of in-service training in the Negro schools within the City of Jackson to fall within the week of the West Tennessee A&M Fair, thereby serving the double purpose of carrying on required in-service training for teachers and of allowing Negro students to have a day off in which to attend the Negro fair; that in 1964 these two fairs were scheduled to be held during the fall of that year and in view of this the historical

custom was followed in setting up the 64-65 school calendar; that this calendar was prepared and approved by The City of Jackson School Board in the spring of 1964 and published, then approved to the extent required by law by the Department of Education of the State of Tennessee; that in the summer of 1964 it was determined by fair officials to discontinue the West Tennessee A&M Fair and to conduct only an integrated West Tennessee District Fair.

That in the fall of 1964 prior to the opening of the West Tennessee District Fair representatives of the Central Council of the PTAs of the predominantly negro schools within The City of Jackson called upon the Commissioner of Education in regard to the West Tennessee District Fair at which time the situation was explained to these representatives in detail. The calendar as established by The City of Jackson School Department for 64-65 was the same type of calendar as had been used in the City of Jackson for nearly a hundred years to the complete satisfaction of Negro and White citizens, that the change in the situation was not caused or motivated by the School Department of The City of Jackson; that the days in question in the calendar were not fair holidays but instead were in-service training days. It is true that on the 14th day of September, 1964, for in-service training the formerly white schools of the City of Jackson enjoyed a holiday. This holiday applied both to *Negro and* White students within these schools. It is true that on September 25, 1964, the formerly Negro schools in the City of Jackson because of in-service training had a holiday. Neither holiday was a fair holiday and no child was denied the privilege of attending the West Tennessee District Fair.

Replication of Defendant to Additional Motion for Further Relief

It is true that an organized boycott took place within the formerly Negro schools of the City of Jackson on September 14, 1964 and that those students taking part in such boycott were placed on probation. It is likewise true that said pupils remained on probation for several months before such probation was removed by the City School Department, not because of pressure from anybody but out of compassion for the children involved who had been made into tools of those seeking to create racial issues where none existed.

The *1965-66* school calendar within the City Schools of the City of Jackson has been adopted by the School Board of the City of Jackson and a copy of same is attached hereto and marked Exhibit A. The Court will note that in-service training has been scheduled at times other than during the Fair week and all students in all schools will be equally able to attend the West Tennessee District Fair, if they choose to do so, outside of school hours.

3. Replying to paragraph seven in the Additional Motion for Further Relief, Defendants would show unto the Court that it is true that a language laboratory was installed at Jackson High School to facilitate the learning of languages. This Defendant does not contend that each and every school has the exact same equipment but, instead, says that equipment is supplied to the various schools in accordance with the needs and capabilities of the school involved; that Jackson High School has a great demand for language training and has students capable of being gainfully assisted by such laboratory; that at the present time Merry High School has no need for such language laboratory; that this is a decision within the

Replication of Defendant to Additional Motion for Further Relief

discretion of the School Department of the City of Jackson as such school board is under no obligation to furnish identical equipment to every school; that Merry High School language department is equipped with electronic recording devices and language tapes which are completely adequate to the needs of that particular school; that when in the opinion of the School Department additional equipment is needed and justified the same will be installed in Merry High School.

Defendants admit that there was introduced into Tigrett Junior High School and Jackson Junior High School, in the seventh grade thereof, a "newspaper in the classroom" program, beginning in September of 1964; that such Program was introduced in these schools on a pilot basis upon the offer of The Jackson Sun to furnish newspapers free to such schools and, at the expense of such newspaper, to send a teacher to take a special course in connection with this program; that the program appears generally desirable and the same will be introduced into the Merry Junior High School beginning in September, 1965 under the supervision of Alexander Moore, Principal, and of teachers, Annie Mae Bond and Ruth Brantley, which teachers will receive special training at the beginning of the 65-66 school year for this purpose; that such programs on a pilot basis were in accordance with the offer of The Jackson Sun, that said publishing company will furnish papers free to Merry Junior High School beginning in the fall of 1965.

4. Replying to Paragraph eight of Plaintiff's motion, Defendant would show that the Jackson Symphony Association, an organization entirely independent of The City

of Jackson, invited students within the fifth and sixth grades of Alexander, Highland Park, Whitehall, West Jackson and Parkview Elementary Schools within The City of Jackson to attend a concert of the Symphony Orchestra on February 11, 1965; that the City of Jackson School Department had nothing whatever to do with the designation of the classes invited; that within the fifth and sixth grades of Alexander, Whitehall and West Jackson there are Negro students who were invited as well as the white students and all of them present in school on that date atended. The Defendant submits that it is beyond the capabilities of The City of Jackson to control such gratuitous offers made by interested citizens and organizations and can only gratefully accept such offers as from time to time are so made when of a desirable nature. The alternative is to not accept the offers at all.

5. Replying to Paragraph nine in Plaintiff's motion Defendant submits that the question of administrative problems which support the Court's plan was fully adjudicated in the first hearing on such plan and, in fact, the testimony offered was not contradicted at all by the Plaintiffs; that no reason, factual or otherwise, is presented in support of this paragraph in Plaintiff's motion and that this paragraph presents no new issue to the Court; that the proof showed without contradiction the critical period with the most administrative problems is the Junior High School and High School age group, just now being reached.

6. Replying to Paragraph ten in Plaintiff's motion, Defendant would show unto the Court that the school calendar attached hereto as Exhibit A indicates a complete

elimination of all professional activities from school participation. The teachers themselves belong to various teacher professional organizations, a matter wholly beyond the control of the Defendants; that the West Tennessee Teacher Professional Holiday and the State Teacher Professional Holiday are holidays given to every teacher within the City School System and the teacher may attend any organizational meeting that they may choose to attend, this being a non-paid day completely beyond the control of The City of Jackson School Department.

Defendants would show that from time to time throughout the year integrated principal meetings occur, integrated textbooks committee meetings occur; that all mass meetings of faculty by race have been eliminated from the 65-66 school calendar; that such matters have no bearing at all upon the attainment of a constitutionally operated school system.

Defendant would show unto the Court that PTA groups are integrated in those schools wherein both white and negro students attend but are still segregated in schools where mixing of the races has not yet occurred; that this situation is wholly beyond the control of the Defendants; that the PTA groups are chartered by a National and State organization and are comprised largely of the parents whose children attend the respective schools; that the City School Department cooperates with these groups to the best of its ability but is unable to control their organization or membership.

Further, that occasionally the City School Department at the request of such PTA groups, grants certain privileges to schools represented by such PTAs which result in an all-negro activity; for example, on May 14, 1965,

Replication of Defendant to Additional Motion for Further Relief

at the request of the President of the all-negro PTA Council, the City School Department allowed a May Day holiday beginning at 12:30 o'clock p.m. for the predominantly negro schools while the predominantly white schools remained in session, (this PTA Council, incidentally, being the same group which complained so bitterly about the 1964 Fair Day arrangement as set out in Paragraph two herein.) thereby unquestionably discriminating against the white children in the City Schools on the basis of race, this type of discrimination apparently being all right.

7. Defendants would show unto the Court that since the submission of the Junior High School districting plan, and since the last proceeding was had regarding elementary districting plans, the City of Jackson has expanded its City Limits to nearly double its present area, such expansion being effective May 19, 1965, at midnight; that in order to encompass such new area and to balance certain pupil load problems within the elementary schools, new districting maps have been prepared and are submitted herewith for approval of the Court, to be effective with the September 1965 year; that the pupils registered in the city schools in 1964-65 year plus the pre-school census taken that year, making a total of all children in the City of Jackson one through eighteen years have been analized as to residence and are depicted upon the maps with reasonable accuracy showing whence such children actually live. The new area is not so shown as the information is not presently available.

The new Junior High School Districting maps merely extend those districts already submitted to the new City

Replication of Defendant to Additional Motion for Further Relief

Limits; the new elementary maps do the same but contain certain changes from the districts approved by the Court.

8. The defendants consider it to be highly pertinent in this proceeding especially with regard to plaintiff's prayer for attorney's fees, that approximately ten days prior to the filing of the Additional Motion for Further Relief against this defendant and of the same proceeding against Madison County, Tennessee, the only local counsel representing plaintiffs indicated to the Court, in Chambers, that things were proceeding very well in both the City and County; that Counsel for this defendant recalls specifically the Court's question as to whether or not the negro citizens felt oppressed in either the City or County and, further, as to how things were getting along generally; that nothing of an affirmative nature was forthcoming in regards to such questions; that within ten days, out of Nashville, Tennessee, from a Nashville attorney, came these pleadings, bearing name also of New York Counsel as well as local counsel; that at the same time a complaint was filed against the Jackson-Madison County General Hospital; all of which bears out defendant's contention that the named plaintiffs or a local class, are not the real plaintiffs at all but instead the real plaintiff is the National Association of the Advancement of Colored People, a national organization supported by dues of its members and grants from various foundations, which organization pays its attorney and not the plaintiffs.

Now having replied fully to the Additional Motion for Further Relief, defendants pray:

1. That the amended Junior High School Districts be approved.

Replication of Defendant to Additional Motion for Further Relief

2. That the amended Elementary School Districts be approved.

3. That Plaintiff's two motions now pending against this Defendant be over-ruled to the end that Defendant can proceed with providing the best education possible under the circumstances to all children of The City of Jackson.

/s/ Russell Rice
Attorney for Defendants
215 East Main Street
Jackson, Tennessee

Exhibit A Annexed to Foregoing Replication

JACKSON CITY SCHOOLS

SCHOOL CALENDAR 1965-66

August 23, 24, 25, 26, 27, 30—In-Service

August 31, Tuesday—Classwork begins 8:30 A.M.—3:00 P.M. for all teachers

September 6, Monday—Labor Day

October 8, Friday—West Tennessee Professional Meetings

November 11, Thursday—Veterans Day

November 25, 26, Thursday and Friday—Thanksgiving Holidays

December 21, Tuesday—Christmas Holidays begin at close of school

January 3, Monday—Classwork resumes 8:30 A.M. all schools

January 19, 20, 21—Semester Exams—Junior and Senior High Schools

January 24, Monday—Second Semester begins

April 1, Friday—State Professional Meetings

April 8, Friday—Good Friday

May 6, Friday—In-Service for teachers—8:30 A.M. to 3:00 P.M.

May 25, 26, 27—Second Semester Exams for Junior and Senior High Schools

May 30, Monday—Teachers' Day at school 8:30 A.M.—3:00 P.M.—Junior and Senior High Schools

Exhibit A Annexed to Foregoing Replication

May 31, Tuesday—Report Cards for all schools—Teachers 8:30 A.M.—3:00 P.M.

May 31, Tuesday—Graduation Exercises at the Senior High Schools

Seven (7) days in-service in the above, leaving three (3) days of in-service to be made up of eighteen (18) faculty and/or group meetings.

Excerpts From Transcript of Testimony

• • • • •

—10—

C. J. HUCKABA, the said witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Rice:

Q. Will you state your name, please? A. C. J. Huckaba.

Q. Mr. Huckaba, what is your occupation? A. I am Superintendent of Jackson City Schools.

Q. You have testified before in these proceedings? A. Yes, sir.

Q. Now, in connection with the elementary school districting which the City of Jackson School Board has proposed, I will ask you if the maps which I am going to hand you—I would like to hand you a map and ask you to identify for the Court what it is. A. This is a school population map.

Q. You will have to talk a little louder. A. A school population map showing the zoning for the elementary schools.

Q. Actually, the map you hold in your hand has nothing to do with population. It is just the districts? A. That's right.

—11—

Q. That is the districting for the elementary schools for the City of Jackson that is proposed in this hearing, is that right? A. Yes, sir.

Q. Does that differ somewhat from the original districting which the Court has already approved? A. Yes, sir, it does.

Q. Now, I will ask you, in order to make this easy to see and identify, if the large map which is on the easel

on which there appears light green lines, if those district lines are the same as the lines shown upon the map which you hold in your hand?

The Court: If you already know it is true, you can go ahead and say yes.

The Witness: Yes, that's true.

By Mr. Rice:

Q. I will ask also if the schools designated on the map which you hold in your hand by name are also shown on the large map as the light green areas circled with white dots? A. That's correct.

Q. Now, I hand you a series of maps purporting to be

the new districting maps for each elementary school within the City of Jackson by name, and I will ask you if those individual district maps are the same as the districting map, the large one upon the easel for the respective school districts? A. That is correct, Mr. Rice.

Mr. Rice: Now, I offer these maps for identification as Exhibits 1 through 9.

(Whereupon, the documents above referred to were marked Exhibits 1 through 9 respectively, and same will be found among the exhibits hereto.)

The Court: Give me which exhibits are which.

Mr. Rice: Exhibit No. 1 is all elementary districts.

Exhibit No. 2 is the Washington-Douglas District.

Exhibit No. 3 is the Lincoln District.

Exhibit No. 4 is the Alexander District.

Exhibit No. 5 is the Whitehall District.
Exhibit No. 6 is Highland Park.

—13—

Exhibit No. 7 is South Jackson.
Exhibit No. 8 is West Jackson.
Exhibit No. 9 is Parkview.
The Court: All right. I have them all now.

By Mr. Rice:

Q. Mr. Huckaba, referring to the exhibits that you have there, Exhibits 2 through 9, which are the individual school districts, there appears upon the exhibits red and blue dots in various places of the exhibits. Now, as far as the exhibits which we handed you just now, not the big map, but for the sake of speed, I will ask you if the check of the addresses, the residences—well, let me ask you this: What do the red dots indicate on the exhibits that you have in your hand? A. The red dots represent negro families, negro students.

Q. The residences of these children and their families? A. Yes, sir.

Q. What do the blue dots represent? A. The residences of the white students.

Q. What span of years does this cover? How were these dots arrived at? A. They were arrived at from a census

—14—

of the students and of the records that we had, and it represents from, say, about birth until eighteen years of age.

Q. Another way of putting it, you use the school registration and the pre-school census? A. That's right.

Q. That's where this came from? A. Yes.

Q. Were these maps and the compilation of these residences and so forth done under your supervision and direction? A. That's correct.

Q. Do they represent, within a reasonable degree of the ability of the maker of that map, to get them in the proper place, a reasonable depiction of the residences of the school children in the City of Jackson? A. Yes, sir.

The Court: Mr. Rice, are you going to be able to make this big map on the easel an exhibit in this case?

Mr. Rice: If the Court please, that is our working map, and I would hate to lose it.

The Court: It occurs to the Court that since

—15—

Mr. Huckaba is going to be testifying about it and it is not the same thing as any of the maps marked Exhibits 1 through 9, that it might be necessary.

Mr. Rice: It is identical to the maps, 1 through 9.

The Court: As I understood it, No. 1 simply outlines the proposed unitary zones and Exhibits 2 through 9 show each elementary school zone separately with the number of white and negro children in each proposed zone of elementary school age.

Mr. Rice: No, sir; of all school age.

The Court: In other words, you show in Exhibits 2 through 9 the numbers of white and negro children living in each proposed elementary school zone for all ages from zero to eighteen?

Mr. Rice: In other words, this map and those are identical. The only difference is that on the large

map one dot represents one family and on the smaller maps one dot represents five families.

—16—

Mr. Williams: Of course, if Your Honor please, in the light of what has been said, we want to object on the ground that what we are confronted with here today is the question of whether or not the school zones as presently constituted are racially gerrymandered in the light of the children who are now registered and attending school.

The Court: Are you objecting to the admissibility of the evidence?

Mr. Williams: No, sir. I am objecting to the relevancy of the evidence.

The Court: Well, that would make it inadmissible if it were irrelevant.

Mr. Williams: In the light of the fact that it includes information regarding children who are not in the school covering a period of an age span of—

The Court (Interposing): In other words, you say these maps are of no probative value on the issues we are trying?

—17—

Mr. Williams: Yes, sir.

The Court: That objection is overruled. You may proceed, Mr. Rice.

By Mr. Rice:

Q. Now, Mr. Huckaba, the large scale map that is upon the easel, if I have correctly stated it, that is merely a larger depiction of these exhibits, Exhibits 1 through 9, that's correct, isn't it, as to districts and as to population

of the school children, and also by race? A. That's correct.

Q. And I believe that map also was prepared under your general supervision and direction, is that not true? A. Yes, sir.

Q. And are you prepared to tell the Court that these maps and these exhibits, the dots and the location of the families are reasonably accurate to the best of your knowledge and belief? A. I am.

Mr. Rice: So now we offer these exhibits as evidence, rather than identification.

Mr. Williams: May it please the Court, we make no objection with regard to the fact that these maps

obviously are, to some extent, hearsay and that counsel has only shown that they were prepared under the Superintendent's supervision and direction. We will accept that contingent upon counsel's accepting the same type of qualification from our expert witnesses.

The Court: We don't think there will be any objection on the basis that they had to set up their maps on what people told them as to what the facts are.

Mr. Rice: They are the facts. We wouldn't argue about that. I don't understand his bargaining with me on evidence.

Mr. Williams: I am not bargaining. I am simply saying that the evidence could be objected to in that the Superintendent has testified that the maps were prepared under his supervision and direction. So he has not gone out and surveyed the city to

establish the location of each child's residence himself personally.

The Court: So you are not objecting. You have to either object or not object.

—19—

Mr. Williams: For the record, I am objecting.

The Court: The objection is overruled.

Mr. Williams: Very well, Your Honor.

By Mr. Rice:

Q. Now, Mr. Huckaba, we—well, I guess I stand here guilty until proven innocent. Answer me these questions, Mr. Huckaba:

In preparing your district lines and your district zones, what are some of the basic factors that must be considered in establishing the district lines for a school? A. First of all, you have to consider the location of your schools. You have to consider the number of rooms you have, the size of the building and facilities. You have to take into consideration where your children are, and you have to fit the number of students to the capacity of your schools to the very best of your ability, taking into consideration that some school buildings are larger than others.

Q. Does the proximity of one school to another school figure into it; that is a school of the same classification? A. That has something to do with it, but, of course, you

—20—

have to take into consideration the number of class rooms in the buildings.

Q. Mr. Huckaba, in the replication of the School Board to the motion for further relief filed against—I guess we had better identify these motions. There are so many of them. The September 3rd, 1964, motion for further

relief filed against them, the School Board filed a replication, and you, perhaps, have a copy of it. I direct your attention to page 6.

The Court: Is this the first replication to the first motion?

Mr. Rice: Yes, sir, I believe it is. September 3rd was the first motion, I believe, and this is the replication to it.

Q. Now, Mr. Huckaba, I direct your attention to page 6, to the point on that page where the various schools are taken up as to capacity, class load and so forth. Do you find the point on there that I am talking about? I believe I gave you the right page, beginning here (indicating). It is the last paragraph of page 6, and then over to page 7. How many pages does that go? A. Bottom of 6, 7, 8, 9, 10, 11—I believe through 11.

Q. I will ask you, then, Mr. Huckaba, if the information which the City of Jackson filed in its replication beginning at the last paragraph on page 6 through page 11 of that first replication of the City to the September 3rd, 1964, I believe it was, motion for further relief, if those facts and figures were compiled under your direction and supervision? A. They were.

Q. I will ask you if you can state that those facts, to the best of your knowledge and belief, are true? A. They are true.

Q. Now, are those figures which you have there complete depictions of each individual school as to its capacity and as to its class rooms and teachers and so forth? A. They are.

C. J. Huckaba—for Defendants—Direct

Q. Now, those figures, Mr. Huckaba, if I may say this, would they not be reasonably true at this date, with every district except South Jackson and West Jackson, which we have changed under our proposed map? A. That's true.

Q. So those figures that you show in that replication, then, that is the result of the districting which you did

—22—

initially on the elementary schools, is that not right? A. That is correct.

Q. I will ask you if that did not provide the various schools with a reasonable balance of pupils and class load and teacher load? A. They did.

Mr. Williams: That is objected to; that is a conclusion to be reached by the Court.

The Court: Well, isn't this gentleman being offered as an expert?

Mr. Williams: If the Court please, if our expert witnesses will be accorded that same privilege.

The Court: We can't bargain on all these points. We have to rule on each of them as they come up.

Mr. Williams: Then I would like my objection to stand.

The Court: Well, you are correct that it calls for an opinion and conclusion. But, as we all know, an expert witness can testify on conclusions and

—23—

opinions; so we overrule the objection.

Mr. Rice: Now, I might ask the Court this: I think we qualified Mr. Huckaba, in our opinion, as an expert at the beginning of this hearing. I don't presume that we need to do that again.

The Court: I believe he testified that he has been in education all his life and has been Superintendent of the Jackson City Schools for some years, which we think would qualify him. Go ahead.

By Mr. Rice:

Q. Mr. Huckaba, in preparing your districts and boundaries, did the nature features within the City of Jackson, terrain features or thoroughfares or railroads and so forth, figure in your contemplation of them? A. Yes, sir, they figured to a large extent.

Q. I will ask you just exactly what those green—the green districting lines are, when you take them off the map and transpose them into the City of Jackson, what are they actually in the City of Jackson? A. They are main thoroughfares, and in some instances, railroads may

be involved, and, of course, we took into consideration the main thoroughfares, the main traveled streets.

Q. Mr. Huckaba, I direct your attention to the dividing line between the South Jackson district and the West Jackson district, which comes in on the map as a green line—what, in actuality, is that? Can you tell from there, or would you like to come closer? A. That's Poplar.

Q. Is that a highway? A. That's Highway 70.

Q. I call your attention to the dividing line between South Jackson and Washington-Douglas district, which begins at the south and goes all the way up serving as the dividing line between West Jackson and Whitehall and between Alexander and Lincoln, and I will ask you what is that actual boundary? A. That's Royal Street, I believe.

Q. I will ask you if that is a minor or major thoroughfare? A. That's a major thoroughfare.

Q. The dividing line between Lincoln and Alexander, then, turns east and runs down a street which is shown on this map. Can you tell me the name of the street?

—25—

A. That's Alice Street.

Q. And what does it reach on the east margin? A. The railroad.

Q. And what does it follow going all the way out of the city? A. The railroad.

Q. Refer, please, Mr. Huckaba, to the boundary line between Lincoln Elementary and Whitehall coming in from the east, and I will ask you what that boundary line is? A. That's Highway 70.

Q. And when it turns west, just before it gets to Whitehall School and goes to the North Royal Street, what is that line? A. Preston.

Q. I will ask you if that is a major or minor thoroughfare? A. That's a major thoroughfare.

Q. I direct your attention between the boundary line between Whitehall and Washington-Douglas running from North Royal east, and I will ask you what that road is? A. That, I believe, is Chester.

Q. Would you look at the map closely? A. That's College. I am sorry.

—26—

Q. I will ask you if that is a major or minor street? A. That's a major street.

Q. The boundary line between Washington-Douglas and Parkview, which is just west of Parkview, goes down what street, Mr. Huckaba? A. I believe that's Dempster.

Q. Is that a major street? A. I believe it is.

Q. Now, I direct your attention to the location of Whitehall School, which is in the bottom right-hand corner of

the City of Jackson, and I will ask you if the location of that school and the location of the Parkview School did not make that—I will ask you if that was not one of your more difficult areas that you zoned?

The Court: Were you not pointing to Washington-Douglas?

Mr. Rice: I am sorry.

Q. Washington-Douglas School in the bottom right-hand corner—and I will ask you if its location in the corner with the population shown to the west and north of it, if that produced any particular problem in the zoning?

Mr. Williams: Objected to as being leading and

—27—

suggestive, if Your Honor please.

The Court: Objection overruled.

The Witness: That was a difficult school to assign pupils to, to get the numbers that school could hold.

By Mr. Rice:

Q. In order to maximize its capacity use, is that the idea? A. That's correct.

Q. Now, Mr. Huckaba, if you will, look in the Parkview Elementary district, and there appears just outside of the city limits a subdividing area. I will ask you what that is, if you know? A. That's the Circle Drive, the area that has been recently taken in by the City of Jackson.

Q. Is that now in the City of Jackson? A. Yes.

Q. At the time these maps were prepared, it was not, was it? A. That's correct.

Q. And it has been in the City of Jackson how long? A. Just about two weeks, I believe.

Q. I will ask you, Mr. Huckaba, if the City of Jackson

—28—

city limits has extended to any extent to the northeast, and to the north and to the northwest? A. They have been extended considerably there, yes, sir.

Q. Were the city limits extended to the south to any lengths? A. Yes.

Q. Now, that southern extension, is there any population in there that you know of? A. Scarcely any—bottom land.

Q. Where, then, besides this area adjacent to Parkview were the heavy population concentrations? A. They are in the northeast, the north and the northwest.

The Court: Are you speaking now of the newly acquired area?

Mr. Rice: Yes, sir. It has been in about a week, Your Honor.

Q. Mr. Huckaba, in arriving at these decisions as to the districting of these schools, I believe you have spoken now of having to start with where the schools are with the capacity of the schools in relation to one another and borderlines, and I will ask you if you applied those factors in coming up with these districts? A. I did.

—29—

Q. Now, as to the change that was made, I direct your attention to the West Jackson district, and I will ask you if you will describe in words as best you can, just exactly what change was made.

The Court: You are distinguishing now between the original elementary school zones, which were

approved by the Court, and the amended zones which you are proposing today?

Mr. Rice: Yes, sir.

Q. Would you point out for the record, as best you can, what was done to the West Jackson district? A. The area was extended eastward to include Royal, and this is Deaderick, and this is Preston.

Q. So this area that I am pointing to here was added to the West Jackson district? A. Yes.

Q. And that came off of what district? A. South Jackson.

Q. This line here used to come up here on the west border? A. Yes.

—30—

The Court: Let me ask you this: Prior, Mr. Huckaba, to this amendment to your zoning, did the Washington-Douglas zone take in all of that area that is now an extension of West Jackson and just the eastern-most square of that area?

The Witness: I believe, Judge, that most of the area—now, it might have been some of the area right in here (indicating).

Mr. Rice: I think the map came down like this (indicating).

Mr. Williams: I am sure you meant South Jackson, Your Honor. You said Washington-Douglas.

The Court: Yes, that is incorrect. But what I am asking here now is that when you amended the map, the north part of the South Jackson zone was cut off and put into West Jackson, and that is the little square, which is the eastern-most part of the West Jackson school zone under the amended plan?

The Witness: That is correct, Your Honor.

Mr. Rice: I believe the Court will find that one or two lines other than that were straightened, but

—31—

that has no consequence. They were merely straightened.

The Court: All right. You have there the map that was originally approved.

Mr. Rice: Yes, sir. The Court will notice by comparison that this line here, which was the southern end of Lincoln-Douglas, was straightened across all the way, as you see on the large map, and this line was brought to North Royal, so that it became straight as appears on this map, and this area of South Jackson right here came straight across in this fashion (indicating throughout).

The Court: Well, that straightening out of the south line of Lincoln resulted in putting some of Lincoln's territory into Whitehall, didn't it?

Mr. Rice: That is correct. We straightened it here and there, and straightened that line there (indicating throughout).

The Court: All right, sir.

By Mr. Rice:

Q. Mr. Huckaba, does that represent your best professional judgment as to a fair and equal distribution between

—32—

those various schools? A. It does.

Q. Is it a racially motivated plan?

Mr. Williams: That is objected to as calling for a conclusion.

The Court: That would be a fact, wouldn't it?

Mr. Williams: If Your Honor please, yes, but he would be stating a self-serving conclusion as to the fact.

Mr. Rice: We withdraw the question.

The Court: The question is withdrawn.

Mr. Rice: I know nothing else to add about the elementary zones, Your Honor.

The Court: All right, sir.

By Mr. Rice:

Q. Mr. Huckaba, I hand you a map, which is identified as Junior High School Districts, and I will ask you if that is the districting map which the City of Jackson proposes for its junior high schools? A. It is.

Q. I will ask you if that map was prepared under your supervision and direction? A. It was.

—33—

Q. I will ask you if the same factors which affected—upon which you based your elementary school zoning were considered and you used as your determining basis in the creation of these zones? A. They were.

Mr. Rice: I offer that as Exhibit No. 10.

The Court: All right, sir. Right here we may get in trouble on the exhibits, because the map being offered showing the proposed zone lines for the junior high schools does not have accompanying it additional maps showing school populations; so if we don't introduce the big map which has been used for testimony, where will we be on that?

Mr. Rice: Well, that is true. May I ask the Court, then, to permit me to do this, to introduce the large

easel map as Exhibit No. 11 in the case, and that we be permitted to withdraw it long enough to make a copy of it?

The Court: Yes, sir. We will admit in evidence, then, Exhibit No. 10 and Exhibit No. 11.

—34—

(Whereupon, the documents referred to were accordingly marked Exhibits No. 10 and 11 respectively, and same will be found among the exhibits hereto.)

By Mr. Rice:

Q. Now, Mr. Huckaba, I direct your attention to the large easel map once more, upon which I have just placed some red lines, and I will ask you if these red lines appearing upon the large easel map are the same as the lines upon Exhibit No. 10? A. That's correct.

Q. When I refer to the large easel map, I am referring to Exhibit 11.

Now, will you tell me what the red markers are on the large easel map? A. The junior high schools, location of the junior high schools in Jackson.

Q. Now, beginning on the left of the map and referring to Exhibit No. 10, which is your junior high map, the marker on the left is what school? A. Tigrett Junior High School.

Q. And the one in the center? A. Merry Junior High

—35—

School.

Q. At my request, and I think at the request of the plaintiffs, did you compile a capacity enrollment and number of teachers' list for each of those schools? A. I did.

Q. I hand you a paper on which are written those figures, and I will ask you if they were prepared under your supervision and direction? A. They were.

Q. And if they are correct? A. They are correct.

Q. Will you read them into the record, please? A. Tigrett Junior High School capacity, seven twenty-five; enrollment, six seventy-eight; teachers, twenty-six. The new Jackson Junior High School—capacity, six fifty; enrollment, four hundred one; teachers, sixteen. Merry Junior High School has a capacity of seven hundred; enrollment, seven hundred three; teachers, twenty-three.

Q. Now, is there any construction contracted for in regard to any of these schools and, if so, what? A. There is construction to be made at Merry Junior High School.

Q. What are you to do there? A. Add four additional class rooms.

Q. Have bids already been taken on that? A. Bids are being taken today.

Q. They are being opened at home, in Jackson? A. That's correct.

Q. What will be the capacity of those four class rooms? A. Those four class rooms should be able to handle approximately thirty students per class. Of course, that varies. Sometimes you put a few more and sometimes a little less, depending on the enrollment. But I would say thirty.

Q. Now, do you think that the districting map that you have there in your best opinion will provide a maximum usage of our facilities and the class room availability and the teacher and class load? A. I think it will.

Q. Is there a certain element of trial and error in con-

nection with this as long as we have a transfer provision such as we have? A. That's always the case.

Q. I would like for you to point out to the Court the

—37—

location of a junior high school building which we are not now currently using. A. This is the old Jackson Junior High School.

Q. Is that a usable building? A. It is.

Q. A junior high school building? A. Yes, it is.

Q. If that building had been allowed to continue in use, from where would it have gotten the bulk of its students? A. It would have gotten the bulk of its students in the vicinity of the school building.

Q. I will ask you if the southern area of Jackson would have been embraced in that? A. I think it would have.

Mr. Rice: Now, I believe the Court just wants this one issue at this time.

The Court: Yes, sir.

Mr. Rice: I believe that is all we have.

Mr. Williams: May it please the Court, I take it it will not be considered out of order if I use this rather unwieldly document here at the podium?

—38—

The Court: Go right ahead.

Cross-Examination by Mr. Williams:

Q. Mr. Huckaba, I believe you indicated that these particular zones were prepared under your supervision and direction? A. That's correct.

Q. That was not true as to the original zones submitted

to this Court, was it? A. I think that all of them were prepared under my direction.

Q. Didn't you testify at a previous hearing in 1963 that the zones which you submitted, elementary zones which you submitted to the Court at that time were prepared by the City Planning Commission? A. That's under my direction.

Q. Was under your direction? A. That's correct.

Q. I believe you have indicated that this map that has been introduced as an exhibit shows the location by an individual dot of every school child in the City of Jackson from birth up through eighteen years of age, is that cor-

rect? A. That's correct.

Q. That includes the pre-school children and everything? A. Yes, sir.

Q. It does not purport to show their present assignments, but simply their place of residence, the zones in which they reside? A. That's right.

Q. Have you brought with you information as to how many respective white and negro children reside in each zone? A. The number of white and negro children in each zone?

Q. Yes. A. I don't believe I have that information.

Q. You don't recall that we requested that information in our subpoena? A. No, I don't recall.

Q. So that we would have to undertake a rather laborious task of counting these dots in order to receive that information, and then we could not be certain, because you have included on here dots for children of an unknown number, ages one to six, in each zone, is that correct, sir? A. That's right.

Q. Would you explain to the Court how you related this

—40—

to pre-school capacity, that is the children from one to six? A. From one to six?

Q. Yes. A. Well, I, of course, have the enrollment of the schools at the present time.

Q. So that you then did not use—you did not use these figures that you have—this map, you did not use this survey information in establishing your zoning plan, did you? A. Yes, sir, I used that map.

Q. Well, then, you can furnish us then how many children there are in each zone who are negro and white, can't you, if you did? A. The total number of people in each zone?

Q. What I am driving at, Mr. Huckaba, is for you to explain, if you please, sir, to the Court, what method or process you used in relating school enrollments, not school enrollments, the location of the children to the capacity of the schools in formulating your school zones when you don't know how many children there are in the respective school zones? A. Well, there was a consensus taken of

—41—

the pre-school children.

Q. But I just asked if you could furnish information as to the number of children actually in school in these school zones, and you said you didn't have that information? A. No, I don't.

Q. So, then, there was some guess work involved in this, then, wasn't there, sir? A. Well, of course, there is always the problem of knowing just how it is going to turn out. But, according to the figures presented a while ago, it seems to have worked out very well.

Q. What figures while ago are you talking about? A. I am talking about the figures here of the capacity and class load on page 6.

Q. That's the replication? A. Yes, sir.

Q. Then, it is your opinion that based on the school enrollments that you had information that year in the schools that your zoning plan worked out rather well, is that correct? A. Yes, sir.

Q. And, consequently, and based on that, as a matter of

—42—

fact, you substantially—well, as a matter of fact, you, up to the time that we filed our exhibit here, you had not intended to change that, had you? A. We had contemplated this change here from South Jackson to West Jackson.

Q. When did you first have that under consideration? A. We have had it under consideration for some time.

Q. Did you have it under consideration in 1963 when we pointed it out to the Court here? A. Well, we didn't consider it at that time, but we have considered it since.

Q. Did you consider it at any time during the year 1963? A. I, of course, considered it, yes.

Q. But you did nothing about it? A. No.

Q. Then did you consider it in September 1964—were you considering it in September of 1964? A. 1964?

Q. Yes. A. Well, I realized the situation that existed.

Q. Well, notwithstanding, then, you denied all these parents who lived in that area, in the northern portion of

—43—

South Jackson zone, admission to Alexander School, didn't you? A. I did, with the exception of some.

Q. You granted exactly six of those, didn't you, six out of thirty-five, that's correct, according to the information in your replication.

Q. That's correct.

Mr. Rice: What was that question?

Mr. Williams: He granted six transfers of negro students in that little north portion of South Jackson zone in September of 1964.

Mr. Rice: If the Court please, are we going into that question?

The Court: I think Mr. Williams is seeking to show the history of why this South Jackson area was taken out of South Jackson and put into West Jackson. But we certainly want to stick to the gerrymandering issue, because, as we said at the pre-trial conference, we can only talk about one thing at a time.

Mr. Williams: Yes, sir.

Q. But you did not then seriously have that under

—44—

consideration at that time, did you, Mr. Huckaba? A. I have had it under consideration, but not to the point of making any recommendation at that time—at that point.

Q. And so these children were required to go to South Jackson? A. That's correct.

Q. Now, except for that little change in there, and except for bringing this western-most line of the Whitehall School over to Royal—that is North Royal Street, isn't it? A. Yes.

Q. And straightening out this little northern boundary on the western-most edge of the Whitehall area, your present elementary zoning map is exactly the same as it was, is it not? A. I believe that's correct.

Q. And those changes were made after the minimal changes that were made—the minimal changes that were made were made after the plaintiffs filed in this case their gerrymandering exhibit, which was during the month of May, that's correct, is it not? A. No.

—45—

Q. Well, at least you did not file them with the Court? A. No, we didn't file them with the Court.

Q. You hadn't submitted them to the plaintiffs prior? A. No.

Q. You knew that we were preparing an exhibit or attempting to formulate information to attack your zoning plan, did you not? A. I didn't know what the nature of it would be.

Q. Well, when we had the pre-trial conference here last September, didn't you derive an understanding that the Court had given us permission to examine your records for the purpose of determining whether or not your zones were gerrymandered? A. That's correct.

Q. Did you feel that it was proper, if you had intended all along to change these zones, to wait until we had spent all our time and money trying to formulate evidence based on the old zones, and then spring a surprise on us? Do you feel like that was fair?

(No response.)

Q. Well, notwithstanding, the true fact is that you say

—46—

you never intended to make any change here until after we filed our exhibit demonstrating to the Court beyond any question the gerrymandering? A. I don't think that is necessarily true.

C. J. Huckaba—for Defendants—Cross

Q. Necessarily, or unnecessarily, is it or is it not true? A. It is true.

Q. Now, Mr. Huckaba, talking about main street lines, I think you said this line was running along Poplar Street, is that correct? A. That is right.

Q. This southern boundary of West Jackson Elementary School runs along Poplar Street from the west? A. That's right, Highway 70.

Q. Is that Highway 70? A. Yes, sir.

Q. Now, when that gets in here—when that gets in—well, the name of that street is obscured on my map, but when its gets into this street where it takes a northern turn—incidentally, what is the name of that street, do you recall? A. I believe it's Johnson.

Q. When it gets into Johnson Street, it encounters a

"V" there with Lafayette Street and Main Street, does it not? A. That's correct.

Q. And Lafayette Street continues right on across town, doesn't it? A. Yes.

Q. And Main Street follows the "V" for one block, and then continues straight across town, isn't that correct? A. Yes.

Q. And are not both of those main streets? A. Yes.

Q. And, as a matter of fact, Main Street goes right by the County Courthouse as various other buildings of municipal significance, does it not? A. That's correct.

Q. Was there any more or less logic in drawing the zone lines for South Jackson Elementary School, in taking that abrupt northward turn along Johnson Street, which is a side street, is it not? A. Johnson Street has quite a bit of traffic.

Q. Well, at least it is not a through street, is it? A. Well, it cuts off to Campbell.

—48—

Q. It dead ends at Deaderick? A. Yes. But just beyond that is Campbell, and it is a thoroughfare.

Q. But you had a main street you were already on here, didn't you? A. Yes.

Q. And wouldn't it have been at least as logical, if, as you say, thoroughfares are natural boundaries, were zoned, to continue right along into Lafayette or Main Street right on across town to establish this South Jackson Elementary zone? A. I had to take into consideration the capacity of the schools.

Q. All right, sir. A. The capacity of West Jackson School.

Q. All right. Now, West Jackson School, I believe your exhibit shows—West Jackson School last year, 1964-65 had a capacity of five hundred and an enrollment of four hundred and nine? A. That's correct.

Q. Ninety-one under capacity? A. Yes, sir.

Q. And I believe you reversed our colors. We had the

—49—

white people blue and the negroes red, and you have the white people red and the negroes blue.

The Court: You don't read any significance into that?

Mr. Williams: If Your Honor please, I am not prepared to say.

Mr. Rice: I might say to the Court we have to make that map over, and if you have a preference, we will change it.

Mr. Williams: Well, the only question in my mind, and then I have bandied this—the only question was, did they do this to confuse us and throw us off the track?

The Court: All right. Now, Mr. Williams, you have asked the witness the enrollment and capacity in West Jackson. Ask him the capacity and enrollment in South Jackson for purposes of comparison.

By Mr. Williams:

Q. The enrollment and capacity in South Jackson is five twenty-five, is it not, as of last year? A. Yes.

Q. And the enrollment was five forty-four, was it not? A. Yes, sir, that's correct.

Q. Now, right while I am on that point, Mr. Huckaba, you have seen the exhibit that was prepared by our expert and filed with the Court here, have you not? A. I have.

Q. Is the file copy here and available, if Your Honor please?

The Court: You may use the Court's copy.

Mr. Williams: Well, I would like to have something marked for identification, and I don't mind using mine.

The Court: All right. Mark it for identification.

(The document above referred to was marked Exhibit 12, and same will be found among the exhibits hereto.)

Mr. Rice: I want to point out to the Court the first line in the introduction of this exhibit, which would be right after the fly leaf, and in which it is

stated that these seven exhibits have been designed

—51—

to discover if the school zone lines of Jackson, Tennessee, City School System have been so drawn to obstruct the racial integration of city schools. I submit to the Court that that is not the law; that these exhibits are completely apart from the law and that they are seeking to attain a different end—these exhibits are designed seeking integration—that is not the law, and I think that these exhibits should not be used for any purpose in this proceeding.

The Court: Objection overruled.

Gentlemen, I think it is about time for a recess. We will give you fifteen minutes. Be back at 11:10.

(Recess.)

The Court: Go ahead, Mr. Williams.

By Mr. Williams:

Q. Mr. Huckaba, you have a copy of this document, which is marked Plaintiff's Exhibit No. 12 for identification. A. No, sir.

Q. Will you glance at this exhibit, and see if this is the same thing that you received? A. Yes, sir, it looks like it.

—52—

Q. Now, this document does purport to reflect by dots and various overlays, each dot representing respectively a negro or white child, depending upon whether it is red or blue—they reflect the residence of children who are assigned to the respective school and the respective overlay involved, isn't that what it purports to represent? A. Those that are assigned?

Q. Yes. A. I am not sure about that.

C. J. Huckaba—for Defendants—Cross

Q. You haven't studied that? A. I haven't had an opportunity to give a thorough study of that. I haven't had it but a short while.

Q. Well, doesn't it appear to you that these dots and the overlays included in Exhibit 4 of this document, for example, appear to represent the residence of white children who are assigned to the school zone of Whitehall Elementary School? A. That's what it states.

The Court: I believe the exhibit speaks for itself.

—53—

Mr. Williams: All right.

Q. What I was going to ask you is if it isn't true that if you look at Exhibit 2 of this Plaintiff's Exhibit, which is Exhibit No. 12 for identification, you find outside the zone of West Jackson and in the zone of South Jackson one, two, three, four, five, six, seven, eight, nine—one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen and that other one down there at the bottom, approximately fifteen red dots representing five children in each case who reside in the area of the South Jackson zone, isn't that true? At least if this exhibit is true, that's what it reflects? A. Yes, if that exhibit is true.

Mr. Rice: I believe if he is going to cross-examine on the exhibit, he ought to prove the exhibit first.

The Court: I believe you are getting a little ahead of yourself, Mr. Williams. I believe you are cross-examining him on an exhibit which has not been authenticated and cross-examine him about something that speaks for itself.

Mr. Williams: All right, sir.

—54—

Q. You are aware that there are a large number of white children residing in the South Jackson zone who were attending West Jackson Elementary School, were you not? A. Yes, I am aware there are some.

Q. Would you say there are as many as approximately seventy-five, as shown by this exhibit? A. I wouldn't know.

Q. Would you say there were more than fifty? A. I wouldn't know.

Q. You mean you haven't kept any records on that at all? A. I am just trying to re-assign pupils in relation to school and capacity.

Q. Well, that's exactly what I am asking you. Will you explain to the Court how you assigned anybody with regard to the capacity of a school, when you cannot tell and don't know how many white children there are who are down here in this zone, who have been attending West Jackson? A. I think we indicated how many were assigned, and how many were refused in a formal record.

Q. No, sir. As a matter of fact, that replication deals only with applications for transfer last year, does it not? A. This year, this school year, the beginning of this school

—55—

year.

Q. And does not reflect the number of transfers you granted last year, does it? A. No. This replication doesn't. I think that we have here on page 6 here—

Q. Well, these figures that you have given here deal only with negro children, don't they? A. Yes, that's true.

Q. Well, you do have some figures that purport to give the application for transfer last year for white children in

the replication that was filed in November and that was —well, I have been wasting time. I am sorry, Your Honor.

You said seventy-six children last year alone presented themselves for registration here in this West Jackson School, is that right, and only eight of the seventy-six were of the negro race? A. I need to see the record.

Q. All right. Let me hand you here my copy, and I assure you I haven't changed it at all. That's my copy of the replication that I received from the Clerk on the 13th day of November, 1964, and I will ask you if that appears

—56—

to be a correct copy of the replication filed by your counsel here, if you will just glance through it, sir.

Mr. Rice: May it please the Court, we are back on transfers, and I didn't go into that, because I did not understand that to be an issue.

The Court: Well, we can't see, Mr. Williams, where the line of questions you are directing at the witness now have anything to do with the alleged gerrymandering of the proposed districts. I would think it would be much closer to the point to examine the witness as to why, in view of the fact that the record shows that West Jackson Elementary School has an under-enrollment, and South Jackson has, to some extent, an over-enrollment. They didn't bring that south line of West Jackson over to the railroad enough, or something like that to take more out of South Jackson and put into West Jackson.

Mr. Williams: That's what I was coming to.

The Court: We have a limited amount of time.

—57—

Mr. Williams: Well, I was trying to bring out this point before I got to that.

Q. You will concede, will you not, Mr. Huckaba, that of the four hundred and some enrollment, that you do have in West Jackson, a substantial number of them are white children who have already transferred out of the South Jackson School zone last year, and the year before? A. There are some.

Q. Well, that's the thing that worries me. That's the reason—counsel belabors me about it—but that's the reason I have to get these facts.

The Court: What we are trying to determine is whether or not the elementary zones as proposed by the School Board are gerrymandered, and it seems to the Court that what you have to do—of course, you have a lot of questions involved—but the beginning point is to consider where people live and the number of students that would attend the school—

Mr. Williams: (Interrupting) School capacity, he said, if Your Honor please, and that is what I am

—58—

driving at.

Q. Do you have any idea at all as to how many of these students that are attending West Jackson are actually residing in the South Jackson zone, under your transfer policy? A. I think that that's reflected in this information that we furnished.

Q. You mean in this replication?

Mr. Rice: May it please the Court, I have to interrupt again at the risk of being called down. Now, the Court's initial order permitted every student enrolled in each school to continue there until they graduated. Now, that has been two years, so we still have four years in those schools, and there is no way we can know that.

Mr. Williams: I am trying to bring out whether or not, as Mr. Huckaba says, he considered these various factors, and one is school capacity and school enrollment. I didn't attempt to restrict adversary counsel's examination in this matter.

The Court: We are trying to deal here with the question of gerrymandering. Now, it looks like to me you can get it more directly, and the Court suggested to you just by way of example, because it

occurred to the Court in view of Mr. Huckaba's testimony, that West Jackson has an under-enrollment and South Jackson has an over-enrollment. Why wouldn't it have been more logical to have drawn the south line of West Jackson to bring it over to the railroad and then put some of South Jackson in West Jackson?

Mr. Williams: I submit to the Court that perhaps that occurred to the Court because I was trying to develop that—

The Court: Why didn't you just ask him the question direct; that's what we are interested in.

Mr. Williams: All right.

Q. Can you state to the Court any reason why you did not bring that line directly across there—

C. J. Huckaba—for Defendants—Cross

The Court: Or if not directly across, bring it over to the railroad and follow the railroad up and carve off that corner of South Jackson and put it in West Jackson?

The Witness: I would like to say that, of course,

—60—

in my study and analysis of these students when they locate, I took the lines as they were, and that, in my judgment, was the best way to equalize the load between the schools, and with this addition here will give relief to the South Jackson School, and we have to watch to keep from overloading in the West Jackson School. Now, there is a relationship between South Jackson and Washington-Douglas, and there are pupils living in the Washington-Douglas area as it is on this map.

The Court: You mean South Jackson, don't you?

The Witness: There are students in the Washington-Douglas area, Your Honor, because of the fact they were allowed to remain in the South Jackson original order, and there are still some in South Jackson. But now with the new students, since there is room for them in Washington-Douglas, we are directing the first grade people to Washington-Douglas area to further give relief to South Jack-

—61—

son. But since they were granted the privilege of staying there, we have allowed them to stay there, even though they are over in the Washington-Douglas area.

C. J. Huckaba—for Defendants—Cross

By Mr. Williams:

Q. You are talking about new negro students now, aren't you? A. I am talking about new students.

Q. But aren't you talking about negro new students? A. Yes, sir.

Q. As a matter of fact, Washington-Douglas, like South Jackson, remains totally segregated negro school? A. They are all negroes.

Q. Now, you say you have been directing students to Washington-Douglas to relieve South Jackson? A. Yes, the new ones.

Q. You are a hundred and twenty-three under capacity at Washington-Douglas? A. That's about correct.

Q. Well, you are also a hundred and forty-eight under capacity at Parkview, are you not? A. Yes, we are under capacity there.

Q. Parkview is further west geographically toward

—62—

South Jackson than Washington-Douglas, is it not? A. That's correct. It looks like from the map.

Q. Most of the negro homes you show on your map as residing in this southern area here—let's see. I believe yours are blue. They reside closer to Parkview—

The Court: You have that wrong. The negroes are red.

Mr. Williams: The negroes are red. All right, sir.

Q. You have a substantial number of your negroes that reside closer to Washington-Douglas than they do to—closer to Parkview than they do to Washington-Douglas, don't they? A. That's true. But that's not the only case.

C. J. Huckaba—for Defendants—Cross

Q. Why are you directing them to go to Washington-Douglas School? A. Washington-Douglas area.

Q. You say you are directing some negroes in the South Jackson area to the Washington-Douglas area because they are in the Washington-Douglas area, is that correct? A. No. I think you misunderstood. The Court order permitted, when we drew the lines of the zones, permitted those that

—63—

are in the new zones, that's approved by the Court, to remain at South Jackson School in the other grades all the way through, allowed them to remain there, and they are still there, unless they have finished the sixth grade, if they were there to begin with. Now, then, the new ones we are directing to Washington-Douglas in order to give some relief here and take up the capacity of Washington-Douglas.

Q. I see. All right, sir. I misunderstood you.

Do you know how many children are involved in the change that you made up here in this little goose-neck in South Jackson? A. I think the map speaks for itself.

Q. No, sir, the map does not speak for itself, because it involves six years of children who are not even in school yet. I am talking about as of your present enrollment—do you know how many are involved? A. I would like to suggest that we are not only concerned with the students now, but we have to think about the others coming along, and we need to get the zones fixed so we feel we can handle them as we come along. Now, that, of course, enters into the picture with these new areas that have been added to the city.

—64—

Q. Well, as a matter of fact, have you counted all these children on here? A. I haven't counted everything on there, but I think the map speaks for itself where they are.

Q. Mr. Huckaba, you are Superintendent up there? A. Yes, sir.

Q. And you are proposing this map to the Court as one that you have drawn as an expert? A. I have had it drawn, under my direction.

Q. But you haven't studied this map yourself? A. Yes, I have.

Q. And you are saying to the Court that it ought to be approved because you used educational consideration such as location of school, location of pupils, natural geographical boundaries, et cetera, capacity and size of school—that you used those factors and took them into consideration in formulating this map? You are saying that, aren't you? A. Yes.

Q. Will you tell the Court how you could use such factors without knowing what the factors were? A. Well, I think we can see from the map how many.

Q. Well, you can't see. I can't tell from the map how

many children there are up there. I could take an hour and count them, but you don't have those figures? A. I didn't count them.

Q. Would you be surprised to know that your little change right here affects only approximately thirty-five negro children, including those who came to you last year and tried to get some relief? A. I wouldn't know about that.

Q. Would it surprise you to know that the little change you made right here and the little change you made right here (indicating) both, together, affect a total of only about twenty children? A. Well, the map speaks for itself.

Q. Out of a school system of nearly eight thousand? A. The map speaks for itself, I think.

C. J. Huckaba—for Defendants—Cross

Q. But you don't actually know how it affects the children who are presently enrolled? A. In my judgment, I think this is a well balanced program, Mr. Williams.

Q. But your judgment has to be based on something. A. There has been a careful study made of the map and the factors and where they are, and it is my judgment, on the

—66—

basis of the figures we had as of this year, that the changes made would give the relief that is needed, along with the fact that the new students coming in to what is now Washington-Douglas, and I propose to assign them to Washington-Douglas, so as to give the needed relief that we need in the South Jackson School.

Q. Mr. Huckaba, let's go on to something else, and then I will come back to that.

The Court has called attention to the fact that in addition to two main highways, two main streets or highways, you also have a railroad track running up diagonally through this South Jackson zone even under your amended plan. Did you give any consideration to that at all? A. Yes.

Q. Did it occur to you that these negro children in this area would be assigned to West Jackson Elementary School if you followed the railroad track? Did it occur to you that the negro children in the northwestern portion, the little "L" that you have, and still have in the South Jackson zone, would be assigned to West Jackson School, a formerly white school, if you either followed Lafayette or Main and came to the railroad track and followed it and went on

—67—

across the railroad track? Did that occur to you? A. They would if they chose to go there, if that was the boundary. I didn't draw the boundary that way. I think if someone else had drawn it, they might have drawn it different, of

course. But in my judgment I felt like this was the map and the zones as they should be to take care of the pupil load in our schools.

Q. Mr. Huckaba, will you observe how that little "L" shape follows the white population and excludes the negro population from the West Jackson zone there. Does that appear to be true? A. It's my considered opinion, if you bring that line across there to the railroad, then there is a possibility, a strong possibility that we would overload West Jackson and then we would have an underload in South Jackson School.

Q. Well, you already have an overload at South Jackson now. A. Just a little.

Q. Sir? A. Just a small amount.

Q. But, as a matter of fact, you don't know how many children would be involved, if you did bring that line

across? A. Well, looking in the map, I have some idea, certainly.

Q. You have some idea from the map? A. Yes.

Q. All right, sir. Each dot on the map represents one child? A. Yes.

Q. If the Court will permit me, I think it's obvious, Mr. Huckaba, can't you see, that this is one of the most sparsely populated areas on this whole map either by white or negro children, except for these few negro children over here in the corner that you cut off with this "L"? A. That's a downtown area there, most of it.

Q. Yes, sir. And you have under capacity over there of nearly a hundred. A. We will have more, though, when we come back up here (indicating). Why overload West Jackson and underload South Jackson?

Q. But you have on this map your pre-school population for six years? A. But I again say that we have to consider these zones with the idea that we are hoping this will be the zones that remain and not have to change every year, have to come and change our boundary lines.

—69—

Q. Mr. Huckaba, in looking at that map, don't you see that you don't have more than about a hundred students living in there, even counting the pre-school children that you have in there for six years? You projected this six years ahead? A. Yes.

Q. And you still don't have a hundred children, and you have a hundred under capacity over there? A. But we have to take into consideration this that we have brought in.

Q. Well, Mr. Huckaba, let's go on to something else.

Going up here in the Washington-Douglas—no, the Parkview zone and the Lincoln zone. Do you have any explanation to the Court as to why this zone follows so religiously the pattern of the negro population and the Parkview follows nearly as religiously, as far as it can, the pattern of the white population there? A. You are talking about Parkview.

Q. Red on your map is negro? A. I am talking about the schools. You are talking about Parkview.

Q. I am talking about Parkview and Lincoln Elementary.

—70—

This is Washington-Douglas, is it?

The Court: You are all confused, Mr. Williams. I think you are trying to compare Lincoln and Whitehall.

Mr. Williams: I am very sorry.

Q. Would you explain why the Lincoln zone follows the pattern so obviously of the negro population and the Whitehall of the white population? A. One of the big factors is the capacity of the two schools. Whitehall is an old school built a number of years ago. Whitehall just simply doesn't have the class rooms and the size class rooms that the more modern schools have, and we have just about got Whitehall to capacity there. Lincoln is one of our largest schools in capacity and class rooms.

Q. Well, Lincoln is two hundred and three under capacity, is that right? A. I think that's right, as I recall.

Q. Well, why, then,—haven't you got some main streets up here in the Lincoln zone, Mr. Huckaba? A. I don't think so.

Q. What about Lane Street here? A. Lane Street is

way on up there.

Q. What about this street (indicating)? A. I don't think there is a large flow of traffic on there.

Q. Would you say Jackson Street is a main street? A. Yes, Jackson is one, and many people travel Preston.

Q. But you admit that Jackson is a main street? A. I think, then, again, you are going to add more, if you are going to bring the line down there, you are going to take—are you talking about Jackson?

Q. I am asking you whether or not it would not have been feasible to run your eastern line for Lincoln down to Jackson Street, so as to relieve. You say Whitehall is an old school and up close to capacity, and why not include these white children down there in north of Jackson Street in the Lincoln zone? A. Well, it seems to me that there was no need of making any unnecessary change of it when this can be handled in the present status.

C. J. Huckaba—for Defendants—Cross

Q. When talking about West Jackson, where we had a situation where colored children had to be moved to West Jackson, you said you couldn't do it, because you had to look to the future. Now, what are we talking about, the

—72—

present or the future? A. We are talking about the present and the future.

Q. We are talking about the present and the future. All right. Then I will go back and ask you why it is that we can't run this line across here based on your present enrollment and put these negro children over in West Jackson School? A. That's not the way I did it.

Q. Well, it would have been more logical to do it that way. A. No, I wouldn't say so.

Q. Why not? A. I just think that the lines I have drawn are, in my judgment, the best for the overall capacity and overall program of the schools in Jackson.

Q. But you can't give the Court a single figure related to school capacity, location or residence of the child that supports that judgment, can you? A. Supported by the map, and it speaks for itself.

Q. This map is the way you support it? A. Yes.

Q. And by the figures in your replication that you sub-

—73—

mitted showing the capacities of the schools? A. That's right.

Q. Let's put it this way: If you had brought the northern boundary of Whitehall down and run it over along Jackson Street, it would have zoned some children here, whether they be white or negro, into Lincoln School, which is two hundred under capacity, and would have relieved Whitehall, which is very close to capacity, would it not? A. Yes.

Q. And Lincoln, however, is all negro, that's true isn't it? A. Yes, that's correct.

Q. And these children who would have gone into the Lincoln zone would have been mostly white people? A. There is another factor that I think needs to be brought in at this time in regard to that. The City of Jackson has extended its limits northeast, north and northwest. There is bound to be expansion and building going on down there near Lincoln School, and you have to take that into consideration when you plan a long-range problem.

Q. Yes, sir. And how many children are involved in that?

A. Well, that, of course, remains to be seen. But we have every reason to believe there is going to be development out there.

Q. You have reason to believe they are going to build subdivisions out there? A. I would say they will. Now, I don't have any definite information on it, but I would assume that the City of Jackson is expanding its limits, and that would encourage it.

Q. You don't have any figures on that now, do you? A. No, sir.

Q. And you do have a school construction program, do you not? A. Yes, sir.

Q. And when your schools reach their capacity and you have no ability to take care of children by changing the zones, you do intend to build new schools? A. Yes.

Q. You have one on the planning board now, haven't you? A. No. We have an addition, if that is what you are referring to, an addition to Merry Junior High School.

Q. Here is a main highway, Lexington Street running right through the Whitehall zone, which you have ignored, that's correct, isn't it? A. Yes.

—75—

The Court: What is your point in that connection, Mr. Williams? In other words, what I am trying to suggest to you is when you direct questions to the witness, direct them to bring out something that you think is really going to be pertinent. The fact that that street does go through there, would that suggest to you that you should have brought Washington-Douglas up to that? Is that what you have in mind?

Mr. Williams: Well, if the Court please, I am not sufficiently expert myself to suggest to him what he should have done, but I am simply trying to bring out that he did not consider it as a factor, which he says he considered, in drawing this zoning plan, which supports our contention that the zoning plan shows on its face and all the Court has to do is look at his own exhibit and his own colors. Of course, this is a matter of argument, and I hadn't intended to get

—76—

into it at this point, such as this "L" in the Washington-Douglas area going around the white residents zone.

Q. Incidentally, Mr. Huckaba, in connection with that Washington-Douglas, it, likewise, is under capacity, is it not? A. That's right.

Q. I wonder if you could explain why you went at Belmont Avenue, the zoning line for Washington-Douglas, why you made a sudden turn to the north there? A. We are under capacity at Parkview School.

Q. You are under capacity at Parkview? A. Yes, sir, the enrollment is under capacity.

Q. So that you could have extended that zoning line further to the west, couldn't you? A. No, not and take

into consideration the people living back this way, Mr. Williams.

Q. Do you know how many people there are living back this way? A. We have a census that has been taken that indicates how many people live in this new area here. This new area here can speak for itself, and there are a lot of people living in this new area that has been recently taken

—77—

in.

Q. Well, you haven't made a census out there, have you? A. There has been a census made.

Q. Incidentally, who made that annexation? A. The City Commission.

Q. The City Commission is one and the same as the School Board, is it not? A. That's correct.

Q. And that annexation was made as of May 19th, 1965? A. Yes.

Q. And when was this exhibit filed with the Court? A. This exhibit was filed as of today.

Q. No. I am talking about the replication that was forwarded that contained those exhibits originally—May the 19th, 1965, filed with this Court. On the same day the Board of Commissions, which also constitute the School Board, suddenly decided to annex this area to the east? A. The Commission acted on that previously, and it took thirty days for it to become effective.

—78—

Q. When did they act on it? A. Approximately thirty days before.

Q. This area that has been annexed is primarily a white area? A. Yes.

Q. Is the area in the north projected subdivision that—then, when you testified before that there were some con-

centrations in the north, the northeast and the northwest that would be brought in under this annexation, what you meant was that actually the City is annexing some land and there is going to be some private development, you hope, up there, is that right? A. That has been the trend.

Q. But, actually, it is all vacant land, just like the bottom land to the south, isn't it? A. No. It is land that can be developed.

Q. But it is vacant land, isn't it? A. It hasn't got homes on it yet, but certainly this can be developed into home residential; whereas, this bottom land would be difficult.

Q. Would you explain why you attempted to vaguely suggest to the Court that there were people and school children

up there right now who would be annexed? A. What area are you speaking of?

Q. That northeast, north and northwest area. A. I said there is every strong indication that they would be.

Q. So that the only people you have annexed are the people here (indicating) that you have down here next to Parkview, is that right? A. Which area are you referring to?

Q. The only actual people now existing involved in the annexation is the little area of white people down to the southeast, just east of the Parkview School zone, is that right? A. No. There are people north and south too, way on out, almost to Interstate 40.

Q. Annexed? A. Yes, sir.

Q. How many are there? A. Quite a group of people in that area.

Q. When you say quite a group, approximately how many are you talking about? A. There is a considerable number. I haven't counted the exact number of them, but the census

has been taken, and that was taken into consideration. This

—80—

area here, a few of those people here are in school now in Jackson and, of course, there will be some changes in that, but those people are areas out there—Fair Oaks, and then the area just beside it, way on up north out the Humboldt Highway.

Q. When you say this area here, what area are you talking about? A. I am talking about the northern area.

Q. Well, in the southern area, aren't they practically all already enrolled in school now? A. No.

Q. They aren't? A. No.

Mr. Williams: May I have the document, please, sir, that I filed? May it please the Court, I mailed to the Court recently an exhibit relating to county students attending city schools, and I would like, if that is in the file, I can't seem to locate it—I wonder if the Court has it?

The Court: I will hand you our copy.

By Mr. Williams:

Q. Mr. Huckaba, did you get a copy of that document which we filed with the Court on the 25th of May, 1965? A.

—81—

That came in just the last minute, Mr. Williams.

Q. Have you looked at it? A. I have looked at it just for a few minutes. I haven't had time to give a thorough analysis of it, but that appears to be somewhat in the neighborhood of correct.

Q. And that document shows the total county students in all the Jackson schools as being approximately three hundred and seventy-three white and approximately twelve

negroes. That's a total of three hundred and eighty-five. Is that about right? A. I would like to know if this is a count of the yellow cards in your survey?

Q. I believe it is. A. If that's the case, then that should be correct. If that's the count, that should be correct.

Q. All right, sir. Now, these county students who are presently attending your schools comprise largely people from these areas that you are talking about, the southeast and the north? A. And up this way (indicating).

Q. What about the southeast over here? A. There are

—82—

some, but it comprises mainly the people in the northern section, a new area that has been brought in.

Q. But, at any rate, you don't know how many those are? A. I don't know the exact number, but I know pretty well.

Q. Give me some idea, then, sir. A. I think I will have to look in another file that I have over there. I am not sure that I have it.

Mr. Williams: Could we furnish the witness, Mr. Huckaba, with that file?

Mr. Rice: If he wants it.

The Witness: According to some information that I gathered recently, there seems to be fifty-three yellow cards at Parkview School, which would comprise mainly people living out in this area here (indicating).

Mr. Williams: We show fifty. We are three under.

The Court: Mr. Williams, we don't mean to cut you off, but where does this line of inquiry have much to do with the alleged gerrymandering issue?

—83—

Mr. Williams: School capacity, if Your Honor please. He is stating that he is considering the an-

nexation that they made in the east and the north and the northwest. What I am trying to establish is that he already has some of those children attending the schools and that included in the figures that he has given as to this year's enrollment, and he does not have any figures, and, therefore, has not considered any specific number of students otherwise.

By Mr. Williams:

Q. Is that correct, Mr. Huckaba? A. Mr. Williams, I have here approximately sixty-two pupils living out in this area—no, wait a minute—eighty-eight pupils. And in the new area, according to the figures that I received from the Principal, there about twenty-six of those from this area right in here (indicating). There are some from outside the city on out further. But, in my county, in the figures that I had the Principal to check on, this new area here, there

are about twenty-six of those people out of the eighty-eight.

Q. I am not sure I understand this now. There are eighty-eight people in the area, eighty-eight school children in the area, eighty-eight elementary school children, and you have twenty-six of them— A. That are in that area that are now presently in Parkview School.

Q. That are now presently? A. Yes.

Q. So, that at the most, you have to consider only some fifty students— A. Some sixty.

Q. Some sixty students in that annexed area. Well, wait a minute. Go back to your figures. I like figures, not estimations. How many students do you have in the area? A. In the new area?

Q. Yes. How many total students in the newly annexed area? A. I would say eighty-eight.

Q. Now, does that include the whole area, or just the

—85—

southeast portion? A. Just that portion.

Q. Now, you say of that number twenty-six are already attending school? A. That's the report that I have from the Principal. I asked him to count.

Q. But your yellow cards show that you have fifty-three? A. But they are further on out, outside of the city.

Q. So that leaves sixty-two pupils residing in this area whom you have to contend with along the eastern portion here? A. That was of school age. Of course, there are other children out there that are under school age that will be coming in later.

Q. But I am talking about what exists right now. That's true as regards what exists right now? A. Yes.

Q. Now, do you estimate that the pupils—do you have figures on the pupils that will live up in the northern area out in the county? A. Let's see. That would come—most of those are attending Alexander School; some West Jackson School.

Q. So, actually, as of the present, as of next year, in spite

—86—

of the annexation, you would not have any children coming from the annexed area who are not already attending school? A. In the northern area?

Q. Yes. A. Yes, we will have some.

Q. Well, how many? A. I don't have the exact figure on that.

Q. Do you have an approximate figure, sir? A. I would say that there are a large number of those pupils out there that are on the yellow cards, which puts them outside of the city limits, are in the Jackson city schools.

Q. They are already in the schools and would be included within the figures shown in the exhibits filed by the plaintiffs on May 25th, 1965, which we will introduce in evidence later. Isn't that correct? A. They would be primarily in this school, and some of them would be in West Jackson. There are a few indicated in Highland Park, but that's due to the fact that they moved into the area. I believe that's the case there. But in West Jackson there are some of these from this area here (indicating).

—87—

Q. So that that four hundred and six enrollment that you have in West Jackson includes not only the white city transferees from the negro South Jackson zone, but includes seventy-one white county students who are attending schools there from way up north in the county? A. Some of them, but some of them are out west, and some of them are along the Bells Highway.

Q. And you have a hundred and sixty-nine white students attending Alexander School from the northwestern portion of the county, do you not? A. How many?

Q. Our figures show a hundred and sixty-nine yellow cards. A. Well, according to the figures that I received from the Prin[illegible]als yesterday, it's a hundred and twenty-two.

Q. Well, let's just say—I will accept your figures. It is at least a hundred and twenty-two, is that correct? A. Yes, I would say that.

Q. And that would constitute most of the children in this annexed area that you are talking about in the north, northeast and northwest, as of now? A. I would say that that would be the case. Of course, there are still people coming

—88—

into Jackson beyond the new annexed area.

Q. But, what I am talking about it, as of the next school year, then wouldn't it be true, Mr. Huckaba, that as much as has been made of the annexation and extension to the city limits, it will not create any substantial increase in the number of students assigned anywhere next year, will it? A. Well, I would have to say, Mr. Williams, that that remains to be seen as to what some of these people are going to do.

Q. But, based on the information that you have now, it will not, will it, Mr. Huckaba? A. I don't believe I could say positively what they are going to do.

The Court: Mr. Williams, it looks to me we are getting hopelessly confused here. Of course, this whole subject is certainly easily capable of being confused, because there are so many factors that legitimately can be taken into consideration in setting up these zones. It looks like to the Court that

we might get some order into this hearing on this gerrymandering issue and get to the point more directly by considering specific areas in which it could be said on the face of it that there might be gerrymandering. Now, looking at Exhibit 1, which is the proposed elementary zones, I suggest to you, Mr. Williams, that you might examine Mr. Huckaba about the areas where the children in the negro school zone obviously live closer to a white school and how that can be justified. As, for example, in the north end of South Jackson. This is a point we have already talked about, in the north end of the proposed South Jackson zone. You have children living in that north end who live actually closer to West Jackson School.

Coming across the south end of the map, you have an area in the north end of Washington-Douglas where the children in that negro school zone live closer to Parkview. Coming on up the map, you have children who live in the south end of Lincoln, who live closer, actually, to Whitehall School. You have some chil-

—90—

dren living in the west side of Lincoln, who appear to live closer to Alexander.

Now, while there may be some more sophisticated points involved than that, it seems to me that's the beginning point of the inquiry, to justify, if there is justification, the extent to which negro children are required to go to a school further from their homes where there is a white school closer. It looks to the Court that that would be the beginning point.

Mr. Williams: May it please the Court, I thought that was self-evident on the basis of the map that has been introduced.

The Court: Well, there are many factors involved here. Of course, distance is important, but it is also important in terms of loads, in terms of natural boundaries and so forth. There are a lot of factors that could be involved, and what the Court wants to know is what, if any, justification, and if you say that one particular boundary appears on the face of it to be wrong, where should it be put, and what effect would it have on the loads? It's very compli-

—91—

cated, but it looks to us that that is the beginning point of the inquiry here.

Mr. Williams: Very frankly, I thought I was doing the best I could. I don't know how else—well, he

says—I asked him about that. I have asked him about the concentrations and he says it is a matter of his judgment, and he doesn't give any basis for his judgment. I asked him about points with regard to location of the schools, and he says it is his judgment, based on school capacity, so I started asking him about school capacity, and when it becomes obvious that the school is under capacity and this is not a factor, he says something about the children out in the county, and that's why I simply propose to establish, for purposes of this record, that there is nobody out there in that county now that needs to be given any consideration whatsoever.

The Court: Mr. Williams, I believe we have already discussed the situation about the north end of

the proposed South Jackson School zone, and whether or not it would be more feasible and more fair to run that south end of West Jackson over to the railroad, follow the railroad on up and thereby carve off what I will call the northwest corner of South Jackson. We have talked about that. Now, you have suggested there might be gerrymandering up here, because there are areas in the north end of Washington-Douglas which are closer to Parkview, and that might be. It occurs to the Court in that connection, though, that if you brought Parkview over a considerable distance, it would still be taking in a substantial white area; so that fact might indicate there was no intention to gerrymandering. In other words, you could bring Parkview over several blocks there and still take in areas where white people live. So that might be an explanation as to why

it is not gerrymandered. I don't know. Now, you also brought in this question about some of the south areas of Lincoln being closer to Whitehall, and suggested maybe you ought to move the Whitehall boundaries further north, I believe, running it along

—93—

Jackson Street.

Mr. Williams: This was simply a point of inquiry. Why, when Whitehall, he says, is very close to capacity, he has the boundary up here following this racial residential pattern, rather than down closer to Whitehall, so as to exclude these children from Whitehall and put them in the Lincoln zone. Plaintiffs say Lincoln is overcrowded, but he says it is two hundred under capacity.

The Court: Well, we can only talk about one thing at a time. But, in this connection, I suppose you are asking if Whitehall is so near capacity and Lincoln is under, why you shouldn't bring the Lincoln line further south. And maybe that's right. I think it is obvious that people who were brought into Lincoln under that would be taken from Whitehall, which is right at their back door, and go considerable distance to Lincoln, which may be an explanation as to why they did what they did. But it looks like to me, in general, that's the type of thing we have to get at

—94—

here.

Mr. Williams: But, of course, when you look at part of the picture like that, sometimes you fail to look at the total. For instance, you pointed out it is obvious that if you set that line south, that these children very close to Whitehall would be sent up to

Lincoln. But, Your Honor did not mention—what Your Honor has to consider is that these lines are not drawn according to—not drawn according to compact areas around a school, and Your Honor has illustrated that. Yes, it's true that these children should go to Whitehall, and the reason the result that Your Honor is talking about would obtain is because they have the Whitehall zone all the way down here to take care of the point of including only white children in Whitehall. If the Whitehall zone were drawn in a compact manner around this school, then all of these children in close proximity, including these negro children up here, who are likewise within a block or two of Whitehall, would then be afforded facilities

—95—

to attend school in a white school, which is admittedly small, and that's why we worry about this. School capacity and enrollment is important, but it should not be used to say that you should have drawn a zoning line a certain way after you have already drawn it that way to take care of a racial matter. You see what I am driving at, Your Honor?

The Court: Well, we have made our suggestion and that is all we can do. You may proceed.

Mr. Williams: Well, I am going on to junior high schools anyway, Your Honor.

The Court: All right, sir.

By Mr. Williams:

Q. Mr. Huckaba, with regard to the junior high school zones, would you explain to the Court why you followed—well, maybe I ought to ask you this first: Does it appear to you that your zone for Merry Junior High School, which

was a formerly negro high school, formerly negro school, generally follows the pattern of the racial residential configuration there? Does that appear to you, sir? A. Those lines were drawn in relation to location of the school—

—96—

Q. (Interrupting) I am sure the Court will permit you to explain, but the question I asked you can be answered yes or no, and I would respectfully ask you, sir, if you would, if you can, answer it yes or no. Does it appear that way to you? A. Let me ask you what the question was again.

Q. Whether or not your zone lines for Merry Junior High School appear to you to follow the racial residential pattern there, so as to include most of the negroes? A. The lines were drawn in relation to the capacity of the schools.

Q. But, as it actually appears, does it appear to more or less follow in a rather general way the pattern of the negro—

The Court: Do you think it is necessary to ask the witness that question? This Court can look at that map and that would be a matter of argument.

Mr. Williams: All right, Your Honor. I will then go ahead.

Q. Mr. Huckaba, I will ask you why it was drawn in that fashion, sir? A. It was drawn taking into consideration

—97—

the three schools and their locations and capacities to handle our junior high school pupils.

Q. The location of the schools and their capacities. Can you tell the Court how many people you have living in here (indicating)? A. That includes the whole population.

Q. Mr. Huckaba, have you counted the number of school children that you have in the Merry Junior High School zone? A. The map speaks for itself.

Q. All right, sir. Do you know how many children actually of junior high school age, how many negro and white children of junior high school age now in school reside in the Merry zone? A. In which school?

Q. In the zone of the Merry Junior High School. A. How many now in the Merry Junior High School?

Q. No, sir. I am asking you if you know—you have shown on here with dots every child from age one through eighteen in that zone. You said you don't know how many dots there are. Now I am asking you if you know how

—98—

many children there are of junior high school age that are now enrolled in some junior high school who live within the Merry Junior High School zone? A. I haven't made a count of that.

Q. Do you have that information for any of these zones? A. No, I don't have the number, but I do know from the location of the families as to which schools will serve these people in relation to the location of these pupils.

Q. Merry Junior High School, as of last year, is already three over capacity, isn't it? A. Yes.

Q. And that's consolidated with the high school? A. With Merry High School, yes. Merry High School is on the same campus.

Q. Well, it is in the same building, as a matter of fact, isn't it? A. Yes.

Q. You don't have that situation with either of these other two white junior high schools, do you? A. No.

—99—

Q. And Merry High School is an all-negro school. There is not a single white child in any formerly negro school

in the City of Jackson as of now, that is correct, isn't it? A. That's right.

Q. When did you decide to build the addition to Merry Junior High School? A. We had it under consideration for some time.

Q. When was the decision made? Do you have anything in minutes on that? A. I don't have exactly in the minutes when it was decided, but it has been under consideration for some time, and the decision was made this spring.

Q. When this spring? A. I don't have the minutes exactly when it was decided.

Q. Mr. Huckaba, you forgot about my subpoena, didn't you? Did I give you the impression in the pre-trial conference that I didn't intend for my subpoena that I issued last year to be applicable at all? A. No, I wouldn't say so. I don't know.

Q. But, at any rate, it was just this spring that the School Commissioners concretely decided to add this addition to Merry Junior High School? A. Yes, sir.

Q. Would you say since March? A. I presume so. I don't know exactly the time, but I would say it has been under consideration for some time.

Q. But that was after you found out that Merry Junior High School was three over capacity?

(No response.)

Q. And you don't expect that any white children will attend that school, do you? A. That remains to be seen.

Q. Mr. Huckaba, that is what you said back in 1963 when I asked you that question. Now, we have had two years to see, and based on—you asked this Court for time to

desegregate so you could have experience, didn't you? A. Yes.

Q. And you draw conclusions based on experience as an educator, don't you, Mr. Huckaba? A. Yes.

Q. And in the two years that you have been operating the system, you haven't had any white children to enroll in negro schools under your liberal transfer provision,

—101—

have you? A. No.

Mr. Rice: May it please the Court, we are arguing now. He is strictly arguing with the witness, and, of course, I have the time, but this lawsuit will go on forever at this rate. But he doesn't know, and he said so.

The Court: Well, he testified, and I think it is conceded by the defendants that there are no white students going to his four negro schools. That's not a fact that has to be established now.

Mr. Williams: I asked if he expects any white children to be enrolled in this new addition he is building, and he says he has no basis for arriving at a conclusion. This is cross-examination, if Your Honor please. Of course, time is important to me too.

The Court: All right. Objection overruled. Go ahead.

By Mr. Williams:

Q. Mr. Huckaba, based on your experience, aren't you

—102—

justified in concluding, or wouldn't you be justified in concluding that no white children will be enrolled in that junior high school? A. Judging on the basis of what has

happened up to now, that might be the case. But, still, I don't know yet.

Q. So that you are building this addition to accommodate more negro children? A. We are building that addition there to take care of the situation more adequately.

Q. Where are the children coming from? A. They are coming from all parts of the city to that school.

Q. They will come from down here, and the few negroes that you have outside of this zone (indicating)? A. Yes.

Q. On the east and on the west? A. Yes.

Q. So that Merry Junior High School, under your zoning plan, will continue to be a totally negro school, based on your best estimate, won't it? A. I imagine it will be predominantly negro. Now, let me bring out a point, if I may.

—103—

Q. You are entitled to that. A. The senior high school exists in the same building, the old part of the building, was built first, and the senior high school is growing in enrollment. We have maintained some of the ninth grade in the old part, but the tenth, eleventh and twelfth grades have to have room to move these people back into the new wing, in order to provide room for the senior high school, which is growing.

Q. Well, Mr. Huckaba, you are some two hundred and forty-nine under capacity over at the new high school over here, are you not? A. Yes, we are under capacity there.

Q. Well, I take it you are following a main thoroughfare route down here (indicating), is that correct? Were you following a main thoroughfare route on this? A. We were following the same route there.

C. J. Huckaba—for Defendants—Cross

Q. On this northeast line on your zoning? A. We followed the same line that we had in the elementary, the same streets.

Q. Well, Mr. Huckaba, why wouldn't it have been just as logical to draw these—see, that's the trouble we get in when I try to do it, Your Honor. I am not going to try. I

—104—

will let the expert try it.

I will ask you this, Mr. Huckaba: Have your ever heard of the principle of feeding from grammar schools into junior high schools? A. The what?

Q. Feeding from elementary schools into junior high schools? A. I don't know what you are getting at, Mr. Williams—feeding?

Q. You are unfamiliar with that principle. A junior high school can accommodate students from more than one elementary school, can it not? A. Oh, I see what you mean. Yes.

Q. And the feeding system contemplates simply assigning students from certain elementary schools to certain junior high schools? A. Yes, I suppose.

Q. And doesn't that constitute a very convenient way of taking advantage of the respective capacities of junior high schools that you have and of their locations, because you can then consider the location of the junior high school in relation to elementary schools which it serves, isn't that

—105—

correct, sir? A. That has something to do with it. Of course, the number of students that you have enter into that.

Q. But, assuming that you can adjust the matter appropriately—for instance, here you have one, two, three,

four elementary schools over here in the vicinity of West Jackson, and you have three here sort of grouped around it on the south, do you not? A. Yes, sir.

Q. Did you consider the possibility of drawing your zone line so that these three elementary schools, Washington-Douglas, that is the pupils zoned for them, Washington-Douglas, Parkview and Whitehall might be assigned to West Jackson? A. We took some other factors into consideration. Of course, this line here follows the railroad. We took also into consideration—of course, you have to go back to what you can accommodate. You have to give some consideration to distances. However, we can't follow that completely. We know that.

The Court: Just a minute. Going back to your question, Mr. Williams,—as we see the Merry Junior

High proposed lines, they would feed a large part of Washington-Douglas.

Mr. Williams: Yes, sir, except part of it—it is excluded.

The Court: But it looks like to the Court that the major part of Washington-Douglas, plus Parkview, plus Whitehall, would all feed into Jackson.

Mr. Williams: If Your Honor please, again, I must say to Your Honor, and this is the danger that I am getting into on this thing, and I probably ought to sit down. I am not making any proposals as of this time, because Your Honor moved this up from two to 9:30, and I had hoped to have a consultation with the people who know about this thing before I cross-examined this witness, and I haven't. So I would not like the Court to understand that any suggestion that I make to Mr. Huckaba on cross-exami-

nation is an expert suggestion on my part as to what should be done. I am just trying to find out whether or not he considered these things.

—107—

The Court: The reason the Court asked some questions is that we thought we must have misunderstood you, because it did look like what the Court said was right.

Mr. Williams: Yes. It looks like he began to follow the system, but then, for some reason, he cut it off, and cut off these negro children down in here from attending West Jackson up there and left them in Merry here.

Q. And also, Mr. Huckaba, did you not consider the possibility of taking these three, Highland Park, West Jackson and South Jackson and letting them feed into Tigrett, which is under strength—you didn't consider that either, and leaving these two up here, both of which are substantial schools—and Lincoln—both have a capacity of seven hundred and fifty, don't they? A. I think that's correct.

Q. And it might have been right logical, mightn't it, to let these schools feed into Merry? That might have been very logical, mightn't it? A. Of course, you can draw your own lines.

Q. But the problem on that is—if you did that, you

—108—

would have the negro residential pattern, which is almost solid within this white residential pattern, which is almost solid, and make it almost impossible for these white people to transfer anywhere under your transfer policy, wouldn't it? A. I wouldn't know about that, because I haven't made a study of that.

Q. Well, as a matter of fact, you didn't study—you didn't actually study your school capacities and your locations too much anyway, in working this out, did you? A. I did study it, yes.

Q. What are the plans for old Jackson High School that you mentioned there in the South Jackson area? A. The old Jackson Junior High?

Q. Yes. A. We have no plans for it now.

Q. Just close that down? A. Well, it is being used now with another agency.

Q. I see. The figures that you have given us on the Jackson Junior High School, the new Jackson Junior High and not the old Jackson Junior High? A. That's right.

Q. Now, have you made any study of where the future

increases in enrollment in the school system are likely to occur? A. I took into consideration the location of this school would mean there would be other development out east of town and, of course, this area that has already been taken in here, a large number of these people are attending county schools. But now with the location of this new school, we feel there is a strong likelihood of those people asking for admission in the new junior high school. It is true that when you locate a school that they begin to develop housing around there, to live in there, to go to that school, because it is a new one. Now, of course, it is true that there is an industrial area out there, and we feel like that all of that development will mean in the future that there will be housing development in there. That's a new building. That's built for fifty years.

Q. Well, of course, if the population increases substantially, then you will have to build more new buildings, will

you not? A. Well, that may be the case, but, certainly, the capacity of this building will take care of it for a long time.

—110—

Q. Well, you have already testified, though, as to the total number of county students that you have involved at present? A. Yes.

Q. And that is some eighty-eight, and twenty-six of them are already enrolled, that is from this area that you are talking about now? A. Yes, on the elementary level.

Q. So you are now talking about sixty-two students. Now, have you in any other area of town, taken into consideration an area of the school system any further increases in the school system—increases or losses? A. Increases in junior high school?

Q. Yes. A. Well, of course, this development north of town will certainly feed into the Tigrett Junior High School. A large part of this over here in the northwest part, and, of course, the development of this area will feed into Merry Junior High.

The Court: Mr. Williams, it is 12:30. It is time to adjourn for lunch, and we will take up again at 2:00 o'clock.

Mr. Clerk, adjourn until 2:00 o'clock.

(Adjournment.)

• • • • •

—113—

The trial of the case was resumed on this date, Friday, May 28th, 1965, at 2:00 o'clock, p. m., when and where evidence was introduced and proceedings had as follows:

The Court: Go ahead, Mr. Williams.

By Mr. Williams:

Q. Mr. Huckaba, I just want to go over one thing briefly and then ask you one or two additional questions, and then I will be through. Getting back to this West Jackson and South Jackson situation, I believe West Jackson was approximately ninety to a hundred under capacity during the current year, and South Jackson was approximately nineteen over capacity based on your figures in your replication that your counsel filed here. Those figures are correct, I believe you testified, are they not? A. That's what is in the record here. I think that's correct.

Q. Now, what I want to ask you is why in your zoning revision that you made just this month, just a few days ago, why did not you draw your zone lines or why didn't you move some of those children from South Jackson to West Jackson? A. Why didn't I move them from South Jackson to West Jackson?

—114—

Q. Yes, sir. During the past year with South Jackson overcrowded like that, why didn't you transfer some of those children to West Jackson? A. Well, they asked for application for going to Alexander School before we had a time to really get into a thorough study of the situation. We had filed this objection to the way we were handling this thing, in the early part of September.

Q. And just because we had filed a motion asking that they be transferred immediately to Alexander, you felt like you ought to resist, is that right? A. I think that you asked for them to be transferred to Alexander.

Q. Well, Alexander was under capacity too, wasn't it? So, actually, the upshot of it is you just felt because we filed a motion that you ought to resist? A. I felt certainly we didn't have an opportunity to make a careful study of it, Mr. Williams.

Q. Now, Mr. Huckaba, I think you have previously testified that included in your enrollment figures in the West Jackson School are some students who are registered from the County, that's correct, isn't it? A. Yes, sir.

—115—

Q. And that's a rather substantial number. I think you said perhaps seventy odd. A. Yes.

Q. And also included in that figure are at least some white students who actually reside in other school zones, some of which are negro, including the South Jackson, and were permitted under your transfer policy to transfer into West Jackson, is that correct? A. Yes.

Q. Now, Mr. Huckaba, let us assume that if you drew the zone lines—you mentioned the possibility that if a change were made in the zone lines so as to include this entire area above Lafayette or Main Street that West Jackson might become overcrowded and that that was a consideration that you took into account? A. Well, of course, there are a number of factors here that are pretty hard to determine just where they are finally going to be.

Q. Well, I think I insisted if you counted the students, it wouldn't become overcrowded, but you said that was a possibility, that they might? A. Yes, sir.

—116—

Q. As a matter of fact, Mr. Huckaba, in drawing your zoning lines to establish the basic zones wherein white and negro children have a right under the Court's decree to go to school, you then took into effect overcrowding which partially consisted of white children who had already been transferred in out of other zones and also county white students, didn't you? A. Well, Mr. Williams, I will have to say that before I made a final settlement on the county pupils, I had to determine those, of course, that were in the area, and those that were assigned to that school before I took into consideration the county pupils, and I had to hold that in abeyance for a few days until I could see just where we were.

Q. But you have nearly a hundred. We have seventy. You have seventy county children and you are already ninety some odd under capacity and you have seventy some odd county children and those that you actually have in there, and I counted some fifty or seventy some odd, and you weren't sure, but at least you admit that you have some transferees into that West Jackson zone from the South Jackson zone, and it would be reasonable to assume, then, that you probably got at least a hundred in there

—117—

who are county students, and they are all white? A. Yes.

Q. Or other white children who transferred in from your city South Jackson zone, that's right, isn't it? A. Yes.

Q. And which would reduce that school, which would increase it to some two hundred under capacity, that's correct, isn't it? A. That seems to be correct.

Q. And you would hardly be likely to find two hundred students in this area right in here, would you? It doesn't

look like it? A. Well, yes, I would say that that probably is the case.

Q. That you would not find two hundred just in that little area? A. Yes.

Q. So that when you were considering the possibility of West Jackson becoming overcrowded, you were taking into consideration the county, white county students in there and the white transferees from the negro school zones? A. Well, we used the enrollment figure.

—118—

Q. And you used that consideration in drawing your zone line and running it up there so as to include these people out of the West Jackson zone? A. That zone line was drawn before these enrollment figures for this year were available.

Q. I thought you just drew that zone line—I am talking about this one right here (indicating). A. Yes, that's right.

Q. So that you did use those considerations in drawing that zone line? A. In this new area, here, that's right.

Q. Now, one or two more questions—you misunderstood me when I asked you what were the areas of possible future increase within the school system. I didn't mean from out in the county. What I was referring to was this —in your supplemental—no, I believe it was in your original replication, you included a breakdown of school children in the classes in the elementary schools by grade and class. Do you remember that, Mr. Huckaba? A. Yes.

Q. Now, I was wondering if you know whether or not in any particular school, like South Jackson, for instance, whether there are more or less children in the sixth grade

—119—

than there are in the fourth grade? A. In South Jackson?

Q. Yes. A. The sixth grade in South Jackson, according to the figures here, is fifty-nine in all, and two teachers, and in the fourth grade, of course, there are more. We have under the fourth grade, which is made up of third and fourth grade pupils—

Q. Well, I didn't want you to get into any detail figures. I just wanted to see whether or not this isn't true.

As I glance over those figures there, isn't it true that you start out with the sixth grade, going downward from the sixth grade, that you have only fifty-nine children in the sixth grade and that that goes progressively upward to the point where you have got about a hundred—let's see—a hundred and fourteen children in the first grade, isn't that true? A. Yes, that's true.

Q. You have more progressive, more or less, with a minor consideration or two, as you go downward to the first grade, that's true, isn't it, Mr. Huckaba? A. Yes, that's true.

—120—

Q. Now, what I wanted to ask you is what would you say that that indicated in terms of the future growth of the enrollment in that particular school? A. You mean as far as the fifth and sixth grades are concerned?

Q. Wouldn't it indicate since you have progressively more in the first grade, going downward from the sixth to the first, wouldn't that tend to indicate that the enrollment of that school is increasing and that you might reasonably expect a continued increase in the enrollment of that school? A. I would say this, Mr. Williams, that the number that would be in the first grade next year could possibly be less than it was this year because there is always a variation. You will have heavy grades and then

occasionally you will have times when there are fewer pupils and that was the case when these in the fifth and sixth grades were in the first and second grades.

Q. What I am saying is, though,—is this—as a general proposition where you have that type of increase that is shown here, the enrollment seems to be increasing at a

—121—

relatively regular pace, that is there is a trend to that. A. Well, we can't guarantee that trend will continue.

Q. I am not asking you to guarantee. What I want to ask is have you looked at this trend in your school system in an attempt to determine where your areas of population, school population increase, are most likely, based on the known facts in your school system, in your present enrollment? A. Yes, I could tell you that.

Q. Based on that, I will ask you whether or not it isn't true that the figures that you have shown to the Court, that they show that your future increases are most likely to occur in South Jackson, Whitehall, Alexander and Highland Park, in that order and that South Jackson is a school that is most likely to increase in its school population? A. If you take these figures here, and if that's continued, Mr. Williams, yes, that's true, but I must come back again and say through my experience that next year's first grade may not be this.

Q. But here you have some known figures, and it is at least a little safer to figure on known figures than it is to

—122—

guess about whether some private entrepreneur is going to build a real estate development up north here. Isn't that a fact? A. Well, that is something that must be considered. Now, when I hear of the developments that are

going to be built around in the new areas, that's a factor that we must consider.

Q. Well, as a matter of fact, though, if somebody built a development out in this—does the City go all the way out now? A. Yes.

Q. Well, if somebody built a subdivision, a new development out in that area, you would build schools out there in that area for them, wouldn't you? A. Eventually, I am sure they would, but not now. They are not in the immediate future, because we have schools to take care of the immediate future. Now, what goes on out there, nobody knows, but if that continues to develop out that way, there certainly would be another school built, and the same thing would be true if it developed this way or this way (indicating).

Q. But if there is a pressing need here in town for

somebody to attend a school close to his area of residence, it is not your intention to zone him away from his area of residence and make him go to school from way up here down here, when there is a school right over here just because at some time in the future you may expect somebody to build a development miles away out in the county —that's not your intention, is it? A. Well, of course, if you will look at other schools and where the pupils are that go, you will find in other areas that you have a similar situation. Highland Park is a good example of it.

Q. I am trying to deal with this annexation situation. You don't intend to tell the Court that you would zone a child in town so that he would have a greater distance to go and pass by a school that was available to him and under capacity because you expect at sometime in the future somebody will build a subdivision way out in the

annexed area in the county? A. Well, there can be more residences built out in this direction.

Q. But that is not your intention, is it, Mr. Huckaba, to do that? Are you representing to the Court that you should

—124—

zone, draw your zone lines with regard to West Jackson, South Jackson Schools so as to require a negro child living up here close to West Jackson, which is under capacity, to go to South Jackson, which is now over capacity, simply because you want to take into consideration the possibility of the future residence development out in North Jackson? You are not representing that you are entitled to do that, or that you desire to do that, are you? A. I will have to go back to this, Mr. Williams: This is an honest effort on my part to try to meet the requirements of this Court, and I have tried as best I can to equalize this situation for the best interest of the children of the City of Jackson, all included. Now, we recognize that we needed to give some relief up here in this area where we are offering to do it. But, at the same time, I do not want to continually be shifting people back and forth because you have got to take into consideration that there is a possibility that you could overload another school and relieve another one and you would be no better off.

Q. Mr. Huckaba, is it a bad educational practice to be

—125—

shifting people back and forth? A. Yes, I would have to say that it is much better for them to stay in their school just as long as they can, the same school.

Q. Better to be assigned to a school and stay there without being transferred? A. Well, of course, there are pupils that have to be transferred. But, at the same time, I would say that a child is better off to remain in the school if at

all possible because there are always adjustments and changes that have to be made.

Q. So that it would be better for these white children zoned down here in South Jackson to go on to the school that is in their zone and not be shifted around and transferred to West Jackson and Alexander and so forth? A. They have been going to West Jackson.

Q. Well, they have been assigned to South Jackson, though, haven't they? A. Who?

Q. These white children who live in the South Jackson zone? A. They asked for a transfer to West Jackson.

The Court: His point is that they have already been going to West Jackson.

—126—

The Witness: That's what I am trying to say.

The Court: I think you finally got into a point about this West Jackson, South Jackson situation and the feasibility of extending the south line of West Jackson eastwardly until it hits the railroad and then go up the railroad until you hit the east line of the proposed Whitehall zone, and then include everything north and west of that new line in the West Jackson School zone. Now, directing your attention, Mr. Huckaba, to the Alexander line and school boundary, I am referring now to the southeast part of the Alexander zone and the southwest part of Lincoln. You will note that the railroad—I assume it is the Illinois Central Railroad—runs up from the south line of Lincoln up and becomes the west line of Lincoln, so there is an area there which is part of the Lincoln School zone, which is west of the railroad. Do you see that?

C. J. Huckaba—for Defendants—Cross

The Witness: Is this what you are referring to here (indicating)?

—127—

The Court: Yes—Merry School is actually in that area.

The Witness: Yes.

The Court: Now, what would be wrong, from your point of view, of including that area from the railroad west in the Alexander School zone, so that the children who live in there wouldn't have to cross the railroad? In other words, take a little of Lincoln and add it to Alexander. I am trying to see from your map there how many families are living there. Do you have any idea how many children live in there?

The Witness: Well, you can see from the dots there are quite a few elementary pupils there.

The Court: Let me ask you this: What was the situation on Alexander last year with respect to capacity as compared with enrollment?

The Witness: We had an enrollment of six fifty-two, a capacity of seven fifty.

The Court: So you are a hundred under capacity at Alexander?

—128—

The Witness: Judge, may I make an explanation there? We have a special education class there that is using one room, and when I arrived at the figure of seven fifty, I took into consideration that if it was a regular class room, then certainly that would be able to take care of thirty to thirty-five pupils. But this room, which is for special education, is taking care of about five or six people, the multiple

handicapped group, and that would, in some respect, cut this back, as long as we have that class there.

The Court: Well, your figure there shows you are about a hundred under capacity, so if you took that into consideration, you would be about seventy under capacity?

The Witness: Yes, sir, that would be the case.

The Court: Now, at Alexander you have some white children who don't live in that zone who have been allowed to transfer to that zone.

The Witness: Yes, sir.

The Court: And you probably have some white

county children who are going there.

The Witness: Yes, we do. But, may I explain that the new annexation is going to make them city pupils, rather than county pupils.

The Court: But you have, you would say, a minimum of seventy under capacity at Alexander?

The Witness: Yes, I would say that that would be the case.

The Court: Can you see any problem whatsoever in transferring that part of the Lincoln School zone, proposed zone, west of the railroad into the Alexander, so that the railroad would continue to be the borderline all the way up from the south line of Lincoln and become the west line of Lincoln?

The Witness: Judge, in Lincoln School this past year there was enough to move out of the area in that school there to make three vacant rooms at Lincoln School. I think that would mean additional vacant rooms there.

C. J. Huckaba—for Defendants—Cross

—130—

The Court: It would obviously mean that some people would be transferred out of Lincoln into Alexander. You say some people have moved out of Lincoln?

The Witness: Yes, sir.

The Court: What is the reason?

The Witness: It was a group of them primarily living around Alexander School asked for admittance into Alexander School. Now, some of the others went to Whitehall. Of course, not a large number of them. The largest number of them went into Alexander School. Now, I would say this, if I may, Judge, that if you put that in the Alexander area, then that's going to mean more vacant rooms in Lincoln, and it is going to possibly crowd the situation in Alexander, because we don't know yet just exactly how this thing is going to fall when this situation develops here outside the city limits. Some of those people have been going to the county, but now, if they exercise that right, they will have the right then to come into the city schools. So

—131—

that's the situation as I see it, that Alexander is way down here, but the city has taken in all this area right on up here, and some of these people have to go here, and some of these people here have to go to Highland Park, and that's the difficulty of the situation.

The Court: Go ahead, Mr. Williams.

By Mr. Williams:

Q. Mr. Huckaba, when you said that some of the people

had moved out of Lincoln last year to go into Alexander, you didn't mean that they had moved out of their zone. What you actually meant was that negroes living in Alexander and who, under the Court's order, had a right to attend Alexander, thereby created the vacancies in Lincoln, and what you further meant was that by reason of your racial gerrymandering, there were no white children taken into the Lincoln School to take their places—that's what you meant, wasn't it? A. That's the case.

Q. So, what you are saying to the Court when you talk about capacity, this capacity of the school, you are not using it in the sense that an ordinary school administrator would use school capacity, in determining school zones,

—132—

are you, in that when you talk about capacity, you are talking about retaining your claimed right to allow white county students, white transferees to come into the zone of a school and to attend that school regardless of the number of negroes who live in proximity to that school, and when you talk— A. (Interrupting) All of the negroes in proximity that applied for Alexander were approved.

Q. What I am saying to you, and now you follow me, please—when you talk about the consideration of capacity in drawing your zone lines and in determining what capacity you can allow that school in terms of the geographical area where you are going to draw your zone lines, you don't consider just geography and capacity alone, you consider the question of how many white transferees from that negro zone you have to accommodate, do you not? A. No.

Q. You don't consider it at all? A. No.

Q. Then will you explain to the Court why you just told the Court that if you adopted the Court's suggestion with

regard to this railroad, you would leave Lincoln under

—133—

capacity? A. Well, these people have the prior right to go in there if it is zoned in there.

Q. What I am saying is if you drew the zone lines according to school capacity and proximity, then you would not have to worry about this over here, because you could pick up some of these—you could pick up some students in the immediate geographical area of Lincoln Elementary School, couldn't you—you could draw your zone lines so as to provide a compact area, couldn't you? A. Well, of course, this is the way I drew it, and in my judgment, this is best, to the best interest of our school system.

Q. And what you deemed to be the best interest of your schools is to continue racial segregation as far as possible, is that not right, sir? A. No. I am trying to the best of my ability and taking into consideration the whole school situation, and I am trying the best that I can.

The Court: Mr. Williams, we are not accomplishing anything with that. Are you through with this

—134—

witness?

Mr. Williams: One more question, if Your Honor please.

Q. There is no question but that West Jackson is under capacity, that's true, isn't it? A. Yes.

Q. There is no question that South Jackson is over capacity? A. A little.

Q. There is no question but that this school is very likely to grow in enrollment in the future? A. That remains to be seen.

C. J. Huckaba—for Defendants—Cross

Q. Well, based on your known figures, this is likely to grow in enrollment?

Mr. Rice: If the Court please, we have been over that.

The Court: I think you have proven all this, Mr. Williams.

Mr. Williams: What I want to ask is—

Q. Why didn't you draw your zone lines so that these children would be transferred to West Jackson, especially since you have a railroad here—

The Court: (Interposing) You have already

—135—

asked that.

By Mr. Williams:

Q. As a matter of fact, you gerrymandered it? A. No.

Q. Notwithstanding the fact that these colored children were excluded from that zone—you deny that? A. Yes.

Q. And you deny that you gerrymandered the Lincoln Elementary zone? A. I deny that I did. I took into consideration the whole situation.

Mr. Williams: That is all.

The Court: Mr. Rice, do you have anything further?

Mr. Rice: No, sir.

The Court: Step down, Mr. Huckaba.

(Witness excused)

The Court: Do you have any other witnesses on this particular point?

Mr. Rice: No, sir.

The Court: All right. We will be glad to hear from your witnesses, Mr. Williams.

—136—

Mr. Williams: Call Mr. Bardwell.

ROGER W. BARDWELL, the said witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Williams:

Q. Sir, will you state your name, age and address, please? A. My name is Roger W. Bardwell. I am forty years old. My address is 2829 Briarwood Drive, Arlington Heights, Illinois.

Q. What is your occupation? A. School Superintendent.

Q. Of what school system? A. School District 59, Elk Grove Township, Illinois.

Q. What is the size of that school system? A. Approximately sixty-two hundred children.

Q. Would you say that is a school system of comparable size to the system we have in this particular case, seventy-three hundred? A. It is in the same size range, I would say.

Q. Would you state, please, your educational and pro-

—137—

fessional qualifications? A. I have a bachelor's degree from the University of Wisconsin, a Bachelor of Science; a Master of Science Degree from the University of Wisconsin, and a Ph.D. from the University of Wisconsin. The Master's Degree was taken in Curriculum Work and Elementary School Administration. The Ph.D. Degree was

taken in School Administration, with a minor in Political Science.

Q. Dr. Bardwell, when did you complete your—when did you receive your Doctor's Degree and begin work? A. I received the Doctor's Degree in 1960. I have an experience background of some seventeen years, all but two of them was connected in school administration. I taught for two years, and then I was a teaching principal for two years, a junior high school principal, Assistant Superintendent for five years, and then I spent two years at the University of Wisconsin doing research work in school systems in the State of Wisconsin. Many of the problems that we worked on were zoning problems, planning school buildings and studying the community to help determine the placement of schools and that type of planning. In the last five years I have been in Elk Grove and

watched that system grow to over five thousand students, and this has involved planning zone arrangements and pupil placement and school buildings and the like.

Q. Now, I forgot to ask you ahead of time about this, but do you have memberships in any professional society that might reflect on your qualifications? A. I am a member of the National School Administrators Association, Illinois School Administrators Association, the National Educational Association.

Q. Now, specifically, you have been Superintendent—you have held your present position as Superintendent of the School District which you indicated for how long? A. Five years.

Q. Dr. Bardwell, were you, along with Mr. Merle Herman asked to make a study of the City of Jackson School Zone and Transfer Plan, to determine whether or not there

was evidence of racial gerrymandering, and whether or not the transfer plan or any other factors had any effect on that? A. Yes, I was asked to do such a study, and carried out such a study.

Q. Did you prepare any exhibits in connection with this

—139—

study? A. Yes. I prepared a total of eight exhibits, trying to analyze the data so that the information could be presented in a form that I could understand and I could possibly communicate the situation to others.

Q. I will hand you a document, which I will ask be marked Exhibit 12, for identification, and I will ask you if you will state whether or not that is the result of your and Mr. Herman's investigation, and if that was prepared by you and under your direction and your supervision? A. Yes. Mr. Herman and I prepared this together. It was prepared under my supervision. This is a summary of all but one—one exhibit I attempted to work on the last day or so, which compares the changes in boundary zones, which I believe are reflected on this exhibit to my right. I did prepare one additional exhibit to this.

Q. Do I understand that you have other copies of this exhibit that you propose to use in evidence, rather than this? A. Yes. These are all copies of the same material.

—140—

I think after these are shown to the Court, they should be made part of the Court record for any future reference. They are a little more accurate than those and a little more stable.

Mr. Williams: We will introduce those exhibits and have them marked now, if the Court please.

Mr. Rice: May it please the Court, until there is

some substantiation what these are based on, other than the fact that he prepared this physical document, we object to the introduction of these exhibits.

The Court: As we understand it, you are objecting on the basis that these documents were prepared to illustrate how you can effect integration, with that purpose in mind, and you say that is not the proper object under the law, and, therefore, you object on that basis, and the Court overrules that. And now you are objecting on the grounds that it hasn't been shown as to the underlying data that went into these exhibits, where he got it and so forth and so on?

—141—

Mr. Rice: That is correct.

The Court: I believe Mr. Williams will be able to show that the information these were based on was obtained as a result of analysis of your records, which information was transferred to the witness, and he, in turn, transferred it to these maps, so we will overrule the objection at this time, subject to Mr. Williams being able to show that this information is based on the data that was obtained from the defendant school system's records.

Mr. Williams: Yes, sir, I had proposed to show that, and I had proposed to ask the witness that after I marked these exhibits for identification.

The Court: All right, sir. Let's mark them now for identification.

Mr. Williams: The others also, Your Honor?

The Court: Whatever you intend to introduce. We might as well mark them all now. You already

—142—

have as Exhibit 12 this series of maps which we think we understand include all that you now propose to introduce except one new one, which has just been made, is that correct?

Mr. Williams: That's correct.

The Court: And you are telling the Court that the ones you are introducing now are a little more accurate because they are more firmly attached together and the boundary lines won't slide over each other, is that right?

The Witness: Yes, sir.

The Court: All right. Go ahead and mark them.

(The documents above referred to were marked Exhibits 12 through 21 respectively, and same will be found among the exhibits hereto.)

The Witness: While he is marking those, could I explain these?

By Mr. Williams:

Q. Yes, if you will, state to the Court how they were prepared. A. Well, when asked to do this, I felt that I had

—143—

to gather enough data to make a judgment. I felt as if I had to act that this was a school system where I knew that every pupil lived. So we prepared a data sheet, just listed numbers and had a place for the pupil's name and address and his race, because we knew that was a factor here. We assumed that it might be. And we got a group of college students from Lane College together and we explained to them what we wanted to put on the data sheet, and also had copies of attendance registration records for the Jack-

son Schools, and we indicated what information we wanted transferred off of that record on the data sheets.

We explained that all to them as a group when Mr. Herman and I were in Jackson, and then Mr. Porter supervised these students in going right down to the central office and copying all of this on the data sheets, and then we asked the students, took another trip to Jackson and explained that we wanted the children placed from the data sheets on the maps by grade and by school. We felt in that way we could insure some type of accuracy on the maps. There wouldn't be too many dots on the maps. I have all the maps back there on the table. Then these maps were sent to Mr. Herman and I in Illinois, and we again trans-

ferred these children that were located on the individual maps by grade and by school and summarized them into these exhibits. We consolidated the children into a single school, and then we took one further step. We consolidated the children into one dot for five children, so we felt that would establish the pattern and be accurate enough for the Court's purposes.

Then we further photographed the map of Jackson, which was the Chamber of Commerce map, the one that we worked on continuously. This is the map of the City of Jackson. We photographed this down to a size where we could handle it and project it through an overhead projector, so we could make our exhibits clear to other people, and we copied the large maps with a piece of tracing paper, laid tracing paper over the maps and copied as accurately as possible each dot, and consolidated to five children for each dot, and then photographed the tracing paper and reduced it to the same scale of the map of Jackson that we planned to project, and then we could analyze the various zoning

situations and they would take on some meaning to us.

Q. Now, Dr. Bardwell, is it your opinion—wait a minute.

—145—

let me ask you this: Is this an accepted method in the profession, the method that you used? A. We used this method to present the data to our own Board of Education.

Q. Is it an accepted research method? A. It's an accepted method of making these things demonstrable to other people, so they can follow the situation—make things as graphic as possible. We use them in presenting enrollment data to the Board of Education so they can participate in these problems and understand them.

Q. Is it your opinion that the exhibits that you have thereby prepared are reasonably accurate? A. We feel they are reasonably accurate, yes.

Q. Now, will you, if you please—I think you have stated that you have restudied the matter based on maps which I furnished to you? A. Yes.

Q. Which contain the revisions made by the defendant? A. Yes. I have studied those maps.

Q. Will you just go ahead and explain to the Court what your conclusions are? A. All right.

—146—

Mr. Williams: I notice that Dr. Bardwell has an overhead projector that he wanted to use on the wall. It didn't show up too well with a great deal of light. I was wondering if the lighting could be partially darkened for that purpose, if Your Honor please.

The Court: Yes, sir.

The Witness: I would like to go through these and support some of the conclusions that I came to. I will have to step down there. Is that all right?

The Court: Yes.

The Witness: This projection will be a little fuzzy, but this will show it to the Court better than any way I can think of. This exhibit, marked Exhibit 13, compares the enrollment of boundaries and zones for two adjoining segregated schools. This is the map of Jackson that we used as the basic underlying map. Now, if I take the predominantly white Parkview School, and lay it over the map, it shows the zone for the Parkview School, and also indicates the number of transfer pupils. Each dot indicates

five students. You can see the number of children that have been transferred into Parkview School, Parkview Elementary School, and then we lay over this the adjoing negro Washington-Douglas Elementary School, and it seems to reveal to me that the white children from the nearby Washington-Douglas Elementary have been transferred to the Parkview School and questions—the boundary line here for the Parkview School, it seems that it doesn't follow geography in its establishment, and it makes you question this "L" shape thing here.

The Court: Dr. Bardwell, do those dots in the Washington-Douglas area represent where people live?

The Witness: As close as possible, yes.

The Court: We notice, for example, on the map submitted by the defendants that the area immediately to the west of Parkview School in the Washington-Douglas area has got practically all white people, and it occurred to the Court that even if you extended Parkview zone westwardly, you would still

get only white people. Are you saying that the blue dots represent where negroes actually live?

—148—

The Witness: They are relatively close—within, let's say, a block of that dot. Five negro children live right here, here and here (indicating). So you could move this boundary over. You could draw it across here (indicating). You could draw it in some other geographic way around the Parkview School and, if course, obviously, if you did, you would achieve a higher degree of integration.

Mr. Rice: May I inquire? I don't quite follow. I don't believe I understand exactly what that map is. I understood him to say that he had it on the map by grade and by school, rather than depicting actual residents. Would you explain that a little bit?

The Witness: Well, in the process of making this overlay of, let's say, the Parkview School, the first step was to locate all the children by grade for the Parkview School, so we have six maps of the Parkview School, one for each grade, and on those maps each dot represents one child, and those maps are as accurate as we could make them.

—149—

Mr. Rice: Where the child lives?

The Witness: That's right. Then we took a piece of tracing paper and set that on top of the first grade map and consolidated all those and made dots representing one for five children, and then we laid the same piece of paper on the second grade map and consolidated it, so we had a copy of tracing paper the same scale for the first and the second grade, and we did that up through the sixth grade,

and we had all of the children located for the Parkview School, and we had them consolidated one dot for five children.

Mr. Rice: That's children that actually go to Parkview School.

The Witness: Yes, sir. That's the distinction between this exhibit and the exhibits given to the Court. They show the children that lived in a particular zone, and this exhibit shows the children that attend this school.

By Mr. Williams:

Q. May I ask a question? It not only shows the children

who attend the school, but it shows the place of residence of those children who are attending that school? A. As accurately as we could. Obviously, when we consolidate five children, you can't get it exactly right.

Mr. Rice: I am not questioning that.

By Mr. Williams:

Q. What I want to make clear, though, if you show a dot on there that means that although you are showing only the children that are assigned to that particular school, nevertheless, those children residing within that dot, there are five children residing there in that immediate neighborhood? A. Correct. We felt that the conclusion of these exhibits were obvious. My conclusion is that this shows a transfer situation which I understand is not the main topic today, but it also shows a situation just for—well, the map speaks for itself, in other words.

This exhibit was prepared, again using the same basic map as the backdrop, and this compares the zone lines of two completely segregated adjoining schools, and reveals how the northern boundary line of the South Jackson Elementary has been drawn to assign a lot of the negro chil-

—151—

dren to South Jackson School. Now, dropping South Jackson over first, it seems to have been drawn to bring in a number of children who live quite close to the neighboring West Jackson School, which is in red. I am speaking of this area here. There are a number of negro children here who live closer to the West Jackson School then they do to the South Jackson School.

It also illustrates how all of the white children have been transferred out of the South Jackson area to the West Jackson School. It also illustrates the negro children in the West Jackson School have been transferred to the South Jackson School—this here approximately five children that live here, have transferred down to there (indicating).

Are there any questions about that exhibit?

Q. I might mention something to you. Do you plan to get into later the question of the amount of students involved in that change that was made? A. Yes, I will try to get into that.

Exhibit No. 3, (Reporter's note: The witness referred to Exhibits by numbers previously placed on there and not by a number given by the Court. I believe in this case he was referring to Exhibit 15.) two adjoining schools. This

—152—

is the Whitehall School, which is integrated to some extent, and this compares the boundary lines with the adjoining

Lincoln School. Here we have the negro children who are attending the Whitehall School. Here is the white children (indicating), and here is the adjoining Lincoln School, and approximately thirty white children that transferred out of the Lincoln zone to Whitehall represented by the red dots here, and only five negro children appear to have transferred out of the Lincoln zone into the Whitehall School.

It would indicate that the boundary line here has been drawn, could have possibly been drawn in such a way as to create a higher degree of integration in this Whitehall School, if it followed the geographic area rather than the racial complex of this neighborhood up here (indicating).

Q. That's what I would like to ask—are those zone lines, in your opinion,—do they appear to be drawn so as to follow the racial residence pattern there? A. I feel that this reveals that. I think, again, the exhibit speaks for itself. It is up to the person examining it to draw his conclusions.

—153—

This No. 4 compares the zone for the integrated Whitehall School with the negro South Jackson Elementary School, and here is the white population and the negro population, and here is the South Jackson Elementary School (indicating). It reveals how the South Jackson zone appears to have been constructed with a large loop to the north to include many negro children living closer to Whitehall School (indicating). It also shows how all the white children in the South Jackson zone have either transferred out into the West Jackson or into the Whitehall School.

This Exhibit 5 is on the junior high schools, and No. 6

is on the junior high schools, and Mr. Herman will discuss those in a few minutes.

The next exhibit combines all the elementary school zones in Jackson with the total negro and the total white population. Again, I think this exhibit somewhat speaks for itself.

This is the map again, and if you draw the total negro population on the map, and again each one of those represents five students, and if we drop the zoning plan over that, I think you can see how they follow in many areas the racial complex of the neighborhood, rather than the

—154—

geography of the situation. You can see this way, if you look at the zones here. They are a little hard to see, and you can follow them, and then you drop this over it, and you can see the Lincoln situation here and the South Jackson situation here. You can do the same thing with the white population and, to a much lesser degree, it reveals the same thing. My conclusions from examining this exhibit indicates there is gerrymandering around the boundaries of the negro schools and gerrymandering around the boundary lines of the predominantly white schools; namely, Parkview, and to some extent, Whitehall, and to some extent, West Jackson. The boundary here seems to follow the complex of the neighborhood.

Q. You mean by that the racial complex of the neighborhood? A. Yes.

Now, I have taken one other step. Just for observation purposes, I have dropped an overlay here (indicating). Each one of these circles represents a radius of approximately a mile, the center of the circle being a school, and this is done to try to see if geography were the main cri-

teria for the zoning of the schools, why most all of the

—155—

schools would be integrated with the exception of Highland Park, and Lincoln would be predominantly negro, but the balance of the schools would be integrated to a much greater degree than they are.

The other exhibit, a new one that I prepared, and I will show that briefly, and then I will talk about it. I tried to analyze what effect the changes would have in the new zone lines that were given to us on Monday. These are the new zones. This was done rather hurriedly. I think again you can pick out the schools—West Jackson, South Jackson, Washington-Douglas, and here are the old zones (indicating), and you can see the areas of progress change right in here. This is the main area that they have changed, and now they have the population, but I think I would rather talk from another map, because it does get rather confusing to see the population on that. We went back to the original maps to analyze just how many children were involved in this area, counting the actual dots. So, if we can have the lights on again, I will refer to another map.

The Court: All right, gentlemen, we will have our recess at this time. Be back in fifteen minutes.

—156—

(Recess.)

The Court: Go ahead, Mr. Williams.

By Mr. Williams:

Q. Dr. Bardwell, have you completed the showing of your exhibits? A. I just have one observation to add to the final exhibit where I pointed out the main changes that

had taken place in the zones because of the new maps that were made available to us this week, and I want to refer to this exhibit on the easel.

I just identified three areas that I have labeled, two between Jackson and Preston here, and the third area is right along here. This has been changed over to Whitehall School. Now, as I explained before we adjourned, we went back and counted all the dots on the original maps, and we found an area, one—

Q. Now, Area 1, will you identify for the record, please? A. That is the area bounded by, approximately, Deaderick, and this is Royal, and this is—I can't be sure—that is Preston on the north.

Q. But, at any rate, that is the area comprised by the

northern tip of the South Jackson zone, which was cut off under the defendant's revised zoning plan and attached to West Jackson, is that correct? A. That's correct. And this was moved as a result of this from South Jackson to West Jackson—six white children who had attended West Jackson, and twenty-nine negroes who had attended South Jackson, that's the number of pupils involved in that change, according to our analysis.

In Area 2, and that's the one bordered on the north by Preston and on the south by Jackson and on the west by Royal, there were no white children in that area, and there were eleven negroes that had attended Lincoln and would be placed in the Whitehall zone.

In Area 3, this strip here, which is difficult to define, that would be Royal Street on the east and it looks like Patterson—excuse me—Royal on the west and Patterson on the east. There is only one child that we could see that

was affected by that change, one negro child; so my conclusion from this would be that these changes have not substantially changed the zoning picture of the Jackson Schools.

—158—

Cross-Examination by Mr. Rice:

Q. Now, Dr. Bardwell, would you have any general conclusions, any further general conclusions on the question whether or not the elementary schools were drawn on a racially gerrymandered basis? A. Well, I think that the data that I put together and have drawn conclusions relative to, that each exhibit substantiates that there is evidence that race has been an important factor in drawing the zone lines.

Q. And is that true considering the capacity and enrollment of the respective schools as shown by the record in this case? A. Yes, I believe it does. I think the factor here is that there are a number of transfer students that cloud the enrollment picture, because there are many children attending a school that do not live in that zone, so your actual capacity and enrollment is clouded by the fact that there are a number of these children and also by the fact that approximately ten percent of the county children come in to the city schools, and I feel there could be significant changes made within the zoning pattern in the inner part of the city without overcrowding any of the schools, although I don't have any exhibits that prove that

—159—

point.

Q. But that point can be reasonably concluded on the basis of the figures that have been furnished here by Superintendent Huckaba, is that right? A. I believe so.

Q. In such a situation where it is apparent that racial transfers are being made, not only within the city and on a very liberal basis between the zones, but also county students are being accommodated in the schools, would you say that school capacity could be—or that alleged problem of overcrowding could be reasonably relied upon in the way that they have here in drawing zone lines? A. No, I do not.

Q. What are some of the objective bases for drawing zone lines? A. I think in my own experience one of the main factors has been the geography of the area, distance from school. This is one of the cardinal principles of zoning children, assigning children to schools.

Q. Would you say that it is an unnatural and abnormal situation to have large numbers of children transferring

from one school zone to another for reasons other than ordinary administrative exceptional cases? A. I think so. I think this is tied in with the fact that the schools have an identity and part of the dual system, as I understand it, of a few years ago—they are identified as either negro or white schools, and I think this would certainly accelerate this desire to transfer on the part of both negro and white either into or out of a situation.

Q. In other words, are you saying, in effect, that if these schools did not have this racial identity, that in your opinion it would be highly unlikely that these large scale transfers from one zone to another would be educationally acceptable? A. That's my opinion. This is just my opinion, that there would be less requests for them if schools didn't have identity of the staff being a certain race. You can certainly see how this would precipitate many requests for transfer.

Q. You say the staff being of one race would precipitate many requests for transfer? A. This would be my opinion, that this would identify that school as either a

—161—

negro or white school, and would develop many requests to transfer into that school on that basis.

Q. Dr. Bardwell, as I understand, you were asked to make a study of the Jackson School System, and may I ask by whom? A. By the Legal Defense Fund of the National Association for the Advancement of Colored People.

Q. Are you employed in this matter?

Mr. Williams: If Your Honor please, unless counsel is going to pay the costs of this, if counsel desires to pay the costs, then I would say this might be a legitimate point of interest.

The Court: You are always entitled to show whether or not a witness is being paid and by whom, for the purpose of showing possible bias. We do it all the time. It is a common question in these cases.

Mr. Williams: I respectfully except. I give notice that I plan to move the Court in this case to tax the—

The Court: (Interposing) You have already so moved, Mr. Williams.

—162—

The Witness: My expenses have been paid.

By Mr. Rice:

Q. Have you been paid a fee for your services? A. I assume that I will, although I have no agreement for such. The only agreement I have is for my expenses to be paid.

Q. But you expect to be paid? A. Yes.

Q. Now, have you testified for this organization before elsewhere? A. In one other case, yes.

Q. Now, who, as an individual, contacted you?

Mr. Williams: I object to that, if Your Honor please.

The Court: Objection overruled.

The Witness: I was contacted by a Mr. Leberman, who is a friend of mine, a person I have known professionally for a number of years.

By Mr. Rice:

Q. And he is with the Legal Defense Group? A. No. He is Dean of a school of education in the east.

—163—

Q. He was speaking to you on behalf of this group that wanted to employ you? A. He asked if I would be willing to do this.

Q. And you were then placed in touch with local counsel? A. Then I was put in touch with Mr. Williams.

Q. Mr. Avon Williams? A. Yes.

Mr. Williams: I renew my objection to the whole line of questioning. It is absolutely immaterial, irrelevant and incompetent.

The Court: Mr. Williams, we have this over and over again in court. When you offer expert adversary, counsel is entitled to find out whether he is being paid, by whom and who contacted him and so forth, and the rules of evidence are no different in this case than in any other case.

Mr. Williams: I respectfully submit that he could

have asked whether or not he was being paid and, if so, by whom, and that would have been sufficient, without going into all this background.

—164—

The Court: All right. Go ahead.

By Mr. Rice:

Q. And you were then placed in touch with Mr. Williams? A. That's correct.

Q. Is it your expectation that Mr. Williams is going to pay you? A. Honestly, I haven't—

Mr. Williams: I object as to the question whether or not I will pay him. It is incompetent and irrelevant in this case.

The Court: Well, we think it is relevant on two grounds. First, when you offer an expert witness, you are entitled to go into any pay arrangements you have for the purpose of showing possible bias of the witness. In addition to that, the plaintiffs have moved to require the defendants to pay the plaintiffs' fees, attorneys' fees, and I assume even expert witness' fees. That being true, I think the defendant is entitled to show whether or not the plaintiffs themselves have incurred any liability for any fees. I think that's the law.

—165—

Mr. Williams: May it please the Court, I intend to cite additional authority to Your Honor on that question.

The Court: All right, sir.

The Witness: I had no formal agreement of any kind. It was just an understanding that I had.

By Mr. Rice:

Q. With this gentleman that contacted you to begin with? A. No; with Mr. Williams—that my expenses would be paid for this study that I was asked to do.

Q. And do you have a contract of any type with any named plaintiff in this lawsuit? A. No.

Q. Dr. Bardwell, if I understood you correctly, and I may be a little bit cloudy on this, your exhibit that you filed and also the overlays which you used on the projector a moment ago, they reflect the residences of the children going to a particular school, that's what that is, is that not true? A. Correct.

Q. That's not to be confused with the residences of every

child living in that area, is it? A. No. If there are children living in that area that might attend a private school, they obviously would not be on these maps, but if they were living in an area and attending a public school, they would be on one map or another, depending on the school they attended.

Q. So your map and your view graph displace—they are not the same as Exhibit 11, are they? A. No, they are not.

Q. You started, as I understand you then, what you have here is the end result of a school year after all registrations have been made, that is right, isn't it? A. That is right. It's a picture of the school system during the month of December, 1964.

Q. Now, are you able to point out to the Court which of these children that are shown upon your exhibits have remained in a school by virtue of the Court's original order, which allowed them to remain in the school in which they were then attending? Can you distinguish between those and any other? A. No. Except I could distinguish

them as transfer students, and then I might ask—this was

—167—

confusing to me. Maybe you can clear this up. I was under the impression that the Court had asked—that the prime right of attendance belonged to the children that lived in the zone.

Q. Right. A. And, to that extent that right superseded the right of the child to stay in the school that it had been transferred in.

Q. Right. But the Court further authorized a child going to that school at the time of the August 20th, 1963, order to continue there. A. I understand that.

Q. Now, are you able to say how many of those children are exercising that right, that you have depicted upon your map? A. No.

Q. Now, in zoning, Dr. Bardwell, do you try to zone just for the pupil load of a given year, or do you try to zone for a period of time, with the flexible pupil load? A. I think you try to do both. The first consideration, I think, is for a given year of education, but obviously, this is

—168—

influenced by the desire to create a stable situation. It doesn't change every year.

Q. Now, I believe you are familiar with this case, and understand now the transfer provisions that have existed and that will exist. Do you understand that's been changed, or that the Court has already indicated that it will be changed? A. I have not a complete understanding of the change. It was just explained to me briefly at lunch. This was the change that just took place?

Q. Yes. Now, let me ask you this question: If you, as an educator, based on your experience, had been asked to district the City of Jackson schools as they exist or as they

existed at the time the Court told us to put a desegregation plan into effect, bearing in mind that the Court ordered that those in the schools could remain, keeping in mind the transfer provisions, keeping in mind the fact that we have had, prior to that time, a completely separated dual system, with whites living in negro areas going to white schools, and negroes living in white areas going to negro schools, could you have districted the City of Jackson elementary schools and been able to tell with any degree

—169—

of accuracy exactly how many children would wind up in each school? A. No.

Q. Now, I direct your attention to the 1964—in districting with that type of situation, it is a trial and error proposition, is it not? A. To some extent it is, but you have ways of finding out in advance the situation. In other words, you can work on spring and early summer on the choices of people before your final lines might be drawn. I mean I think that that question is a little misleading in that it isn't that hit and miss.

Q. Let us put it this way, then: On August 20th, 1963, the Court handed down its decision in the City of Jackson segregation case. Our schools began on September 2nd. Now, in that time could you determine with any accuracy what was going to happen in the districting of schools?

Mr. Williams: I object to that, because the School Board had taken several months prior to August to conduct a so-called census and prepared this zoning map and presented it to the Court at the July, 1963, hearing. So that question is based on a

—170—

false premise.

The Court: I think, Mr. Williams, your objection would go to the weight of the evidence, as opposed to the admissibility, so the objection is overruled on that basis.

By Mr. Rice:

Q. The shorter the time, the more difficult the task—you will agree with that, will you not? A. That's true.

Q. Now, I direct your attention to the September term of the 1964-65 school year. In that particular year, Dr. Bardwell, the city schools of the City of Jackson opened on August 31st. On September 4th, five days later, we were attacked in court for the operation of our system. Now, I ask you, in all fairness, if anybody had time in that period to actually assimilate what was happening in the City of Jackson School System?

Mr. Williams: That is objected to, if the Court please.

The Court: I think that's probably a question that is not subject to an expert opinion, Mr. Rice. I sustain the objection to that.

—171—

Mr. Rice: All right. Let me ask this question:

Q. I believe that you were supplied in data form, compiled form, transfer information concerning the City of Jackson School System for the 1964-65 school year? A. Yes.

Q. How long did it take you to analyze those figures and come up with a conclusion? A. Well, that's a little bit tough, because I had another full time job. We spent several days on this during the holiday recess with some

secretarial help. I would say that all told, counting secretarial help, it took about two weeks to put together the data for these exhibits. Now, it stretched over a much longer period of time, because we had to take that two weeks whenever we could find it.

Q. I believe that you said that you had some experience in districting and establishing new schools for the State of Wisconsin—was it? A. Both in Wisconsin and in Illinois, yes.

Q. Now, were these primarily in connection with the location of new schools? A. Primarily, yes.

Q. I will ask you if it isn't true and a fair statement

—172—

of fact, Dr. Bardwell, that when you take an existing school system, that you simply have to take the schools where they are when you try to district them? A. That's correct.

Q. So, when you give us a circular districting of our city schools—what is the purpose of that exhibit? Are you recommending that type of districting? A. No.

Q. It wouldn't work, would it? A. No. That circle obviously wouldn't, and I say so in the exhibit, because there are many other factors that would influence the circles, but it would give you a basic starting point, and from there you would take in the geographic situations.

Q. Now, look for a moment to Defendant's Exhibit No. 11 to the Washington-Douglas area, the district that you see here. Now, that school, according to the proof and the figures shown here, has a capacity of five hundred twenty-five pupils. Now, good planning would require that the City of Jackson use that capacity to its best advantage, would it not? A. Yes. But I would like to qualify my answer there in that the building itself is quite a minor

—173—

part of your educational investment. It represents somewhere in the neighborhood of ten percent of your cost of education, so that the building should not dictate the program or the location of the school, and I think this is a thing that we have failed to communicate very well to people who are helping make educational decisions. It goes over a long period of time, and it's a minor part of your experience in operating your school system.

Q. Do you suggest that the school be abandoned? A. I suggest there are some other educational and social considerations that might outweigh the factor which you mention, which is a factor certainly—I am not saying that it should be completely disregarded, but this other thing might cause you to have empty rooms somewhere else.

Q. Now, in following that line of reasoning, would it be proper for a city to consider what it has spent for educational capital outlay in the last few years, and what its bonded indebtedness is? A. That would certainly be a factor.

Q. Would it surprise you to know, Dr. Bardwell, that the City of Jackson within the last, since 1947, has con-

—174—

structed Washington-Douglas, Parkview, Lincoln, Alexander, Highland Park, all brand new schools, in the elementary field? A. Yes.

Q. Would it surprise you to know that Tigrett Junior High School, Merry Junior High School and the new Jackson Junior High School are all—have all been constructed within the last— this one is brand new, is just opened, and the other two have been constructed within the last ten years? Would the fact that the bonded indebtedness of the City of Jackson for school construction is approxi-

mately six million dollars influence your thinking on what we should do about these schools? A. I am not familiar with the limit. What is that limit?

Q. We have no legal limit. Our bonded indebtedness is approaching forty percent of our assessed valuation. Would that influence your thinking? A. That's a high figure, and would certainly influence these decisions as to how you use your buildings.

Q. So a town in that situation is not ready to abandon its school buildings? A. I didn't suggest that as the main consideration. I think there are many other ways that this could be done, and I wasn't asked to present a plan.

—175—

It would be presumptuous on my part to do this. I am not that familiar with the situation. I am not familiar enough to say the lines should go down this street or that street, and I feel there are many other alternatives that you would have to consider. For instance, there is no reason why every school has to have six grades in it. We do that many times in our system. You can have a number of different kinds of attendance centers. The only school that we have that is six years is the elementary school. So, all of these factors could be considered in your zoning for a town similar in size to Jackson.

Q. Did you consider that type of graph in arriving at your criticism of the present zoning? A. I looked at it, and I made certain conclusions. I made no specific recommendations.

Q. I understand that, but is your conclusion based, in some degree upon your thought that our system should be changed, and that it could be done a different way? A. To some extent, I am sure. I don't mean to be critical with that comment. It's just an observation.

Q. Let's just accept for a moment that the City of Jackson chooses to operate with six elementary schools, three

—176—

junior high schools and three senior high grades. The plan that you have on this Exhibit 11 for elementary schools, that is a plan, isn't it? A. Yes.

Q. And if twenty-five or thirty people sit up here and drew a plan, you would probably have twenty-five or thirty different plans, wouldn't you? It's a matter of opinion, isn't it? A. There are certain principles that are very important to follow, and you can analyze the plan to see how well it measures up to those principles.

Q. Now, have you had an opportunity to look at the school load, class room load capacity enrollment and so on for the City of Jackson elementary schools that was in the replication? A. Yes, I am familiar with that replication.

Q. I will ask you, Dr. Bardwell, if the school load and class load and teacher load are not fairly balanced in those schools? A. Yes, they are.

Q. Dr. Bardwell, I understood you to say that you are from Arlington Heights, Illinois? A. Yes.

—177—

Q. What is the nature of that community? A. I think it would be characterized as a middle class suburban-type community.

Q. Mostly residential? A. Quite a bit of industry. There are a number of different types of population—a number of trailer courts and apartments. It is not the conventional bedroom-type suburb.

Q. It's a very well-to-do neighborhood, isn't it? A. No, it isn't. It's middle class. There are some parts of it that

are upper middle class, but it isn't a wealthy community. You have a lot of industry, so you have a broad tax base.

Q. You have eleven elementary schools there, including one junior high? A. Two junior high. We have thirteen schools altogether.

A. A high school? A. No. The high school is part of an overlapping district.

Q. Your people go to that high school? A. Yes.

Q. That's not under your jurisdiction? A. No, it is not.

—178—

Q. You have a large negro population in Arlington Heights? A. No, we don't have a negro population.

Q. You do not have any, do you? A. No, we do not.

Q. Do you think there would be a difference in administering an all-white school district and trying to integrate one, or desegregate one that has been segregated? A. I think there is a difference, certainly, but the principles and goals should be the same.

Q. Have you had experience along this particular line? A. No, I have not.

Q. I believe the word "gerrymander" originated in Illinois, didn't it with Congressman Jerry—

The Court: That's Massachusetts.

The Witness: That's Massachusetts.

Mr. Rice: Well, it didn't originate here. It came from somewhere else.

Q. Your main criticism of the plan, as I understand it, Dr. Bardwell, you have stated, I think, that the school load, class load, pupil load per teacher is reasonably even. Your main criticism of it, then, is that it does not effect enough integration, is that true? A. I stated the question

—179—

a little differently. I said that the boundary lines were drawn so that the majority of the schools remained highly segregated. That was my conclusion.

Q. Is your conclusion drawn from the exhibits which you prepared? A. Yes, sir.

Q. And it was not then drawn from a study of where the children actually live over the entire community? A. The children are located on my exhibits as close as possible where they live.

Q. But, by school? A. By school.

Q. But I am talking about you made no study of where the children lived in the community, regardless of what school they go to? You made no study of that at all, did you? A. Not independently, no.

Mr. Rice: We have no other questions.

The Court: Anything further, Mr. Williams?

Mr. Williams: No further questions, Your Honor.

—180—

The Court: We would like to ask the witness one question: Dr. Bardwell, did your research indicate to you how many negro children at the present time of elementary school age live in that part of Lincoln School zone from the railroad to the western boundary of the zone?

The Witness: I meant to allude to that when I had that on the projector, because I realized that that question would come up. This exhibit here shows that, and I believe the total amount—seems to me there were twenty-nine children in there, but I couldn't be sure. This area here from the railroad to the western boundary of Lincoln, sort of a rectangular-shaped area—it would be right in this area

here. According to this exhibit, approximately thirty-five children live in that area.

The Court: Do your records show how many negro children of elementary school age live in the northern part of South Jackson School District be-

—181—

tween a line extended from the present south line of West Jackson to the railroad and then following the railroad up to the west line of Whitehall, roughly a rectangular area there?

The Witness: I would have to take a minute to come up with a figure there.

The Court: All right, sir. Take a minute.

The Witness: Would you give me the northern boundary line of that area again?

The Court: The northern boundary would be the present southern boundary of West Jackson just below the actual location of the school. In other words, what the Court is suggesting the possibility of is this: We are considering now the amended plan as proposed by the defendants. The Court is considering the possibility of extending the south line of West Jackson, which is the north line of South Jackson, extending it directly east until it hits the railroad, and then follow the railroad up to where the railroad hits the west line of Whitehall, which is also a corner of the present West Jackson, and include that into West Jackson. It's a rectangu-

—182—

lar shaped area. Let the Court come down here and show you on the map.

We are now referring to Exhibit 11. We have heretofore been asking you about an area presently

in the Lincoln School District, which is bordered by the railroad on the east, and the western boundary of Lincoln on the west, and you have already given the Court your estimation of the negro children of elementary school age in that area, which you say is about thirty-five, the best you can tell. Now, moving over here to the West Jackson and South Jackson area, you will notice that the south line of West Jackson and the north line of South Jackson, as you move east, get to a point and run directly north. Instead of doing that, if you extended that line directly east along Lafayette Street to the railroad and then followed the railroad in a northeasterly direction to the west line of Whitehall, which is also a corner of the present West Jackson School zone, and then include everything north and west of the

—183—

line that we have just described in West Jackson, how many children would be included?

The Witness: My estimate there would be twenty-five, approximately, white children, and approximately thirty negro children.

The Court: All right, sir. We have nothing further.

Mr. Williams: I have some further questions, Your Honor.

Redirect Examination by Mr. Williams:

Q. Dr. Bardwell, when you stated your conclusion that these lines were drawn in accordance with racial residential patterns, did that include the white neighborhoods as well as negro neighborhoods? A. Yes.

Q. So that would it be fair to include from your statement that the white schools are drawn—not only are the lines drawn so as to maximize, minimize the number of negroes in white schools, but also to minimize the number of whites in negro schools? A. They would be together, yes.

—184—

Q. And when you add to this latter factor the transfer system, what has that resulted in with regard to negro schools? A. Totally negro schools, as a result.

Q. Totally negro schools? A. Yes.

Q. Now, there would be a difference from zoning a segregated school system and zoning the type of school system that you operate. In other words, the problem whether or not you would have—you would consider race would be a difference in the zoning of a school system such as yours, which has no negro children and a school system such as that in Jackson, which has the two systems—that would be a difference, wouldn't it? A. Yes, it would.

Q. But, is that a relevant—is that an educationally sound, relevant consideration that should control the drawing of zone lines, Dr. Bardwell? A. I don't think it can under the laws—the way I understand the laws of our country.

Q. So that in drawing your conclusions with reference to the exhibits which you have prepared, you have used all of the relevant considerations which you understand

—185—

to be lawful and educationally sound, is that correct? A. I looked at the situation and made conclusions. I have not made recommendations. If I were asked to, I think that would certainly be all of the things that I would try to consider in any kind of recommendation I might make.

Q. You did not intend to say that you couldn't, if you were asked by the Court or by the defendants to draw a

zoning plan for this school system—you did not intend to say that you couldn't do it? A. No, I didn't.

The Court: Do you want the job?

The Witness: I think that's a job for the local people to do that. I think certain suggestions and recommendations can be made, but that's a job of the people that are right on the scene.

The Court: Anything further?

Mr. Williams: I believe that is all.

The Court: All right, step down.

Call your next witness.

(Witness excused.)

—186—

Mr. Williams: Call Mr. Porter.

ALBERT PORTER, the said witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Williams:

Q. State your name, age and address. A. My name is Albert Porter, age forty, and my address is 400 Lacomte Street, Jackson, Tennessee.

Q. What is your occupation? A. College accountant at Lane College.

Q. Are you a married man? A. I am married and have two children.

Q. And you are one of the intervening plaintiffs in this case? A. Yes.

Q. Were you present at the pre-trial conference last September when the Court directed the plaintiffs be given access to certain records of the school system? A. I was.

Q. Did you, as one of the plaintiffs, request me to at-

—187—

tempt to obtain and engage the services of Dr. Bardwell and Mr. Herman to help us with this survey? A. I was.

Q. Did you, as one of the plaintiffs, participate in assisting Dr. Bardwell and Mr. Herman in connection with the formulation of this survey? A. I did.

The Court: Speak a little louder, I believe adversary counsel can't hear you, Mr. Williams.

Mr. Williams: Very well, Your Honor. I would like to ask whether or not the Court took that county exhibit back?

The Court: No, sir. We gave it to you. As far as we know, you still have it.

Mr. Williams: All right, sir. Here it is.

Q. There is attached hereto a letter a carbon copy of which was sent to the Court, and which was filed here on May 25th, a document consisting of several pages and purporting to be certain statistics regarding the enrollment of county students in the city school system of Jackson. Will you state what role you played in the preparation of

—188—

that? A. I took the information that was secured from the yellow cards in the Superintendent's office. I counted each student by grade and tabulated this personally, myself.

Q. Now, the yellow cards in the Superintendent's office were, as you were advised by the Superintendent, represented what? A. The students from the county schools that were attending Jackson city schools.

Albert Porter—for Plaintiffs—Direct

Q. The students outside the city limits and residing in the County of Madison who were attending Jackson school systems? A. That's right.

Q. And you did obtain those figures and formulate them yourself and prepared that exhibit from the defendant's own records? A. That's right.

Q. Will you offer that in evidence as an exhibit? A. Yes.

(The document above referred to was marked Exhibit 20 to the testimony of the witness, and same will be found among the exhibits hereto.)

—189—

The Court: You don't want to offer the letter?

Mr. Williams: No, I would like to detach that and return it to the Court, but I doubt that the Court will ever have any use for it.

Q. Now, Mr. Porter, I believe you have already testified that you assisted Dr. Bardwell and Mr. Herman in the preparation of the data for their exhibits, is that correct? A. Yes, sir.

Q. Is the data in this Exhibit 20 that you have just filed —is this data accurate? A. According to the count—

Q. According to the information that you obtained from the defendants' records? A. Right.

Q. Did you supervise the students who obtained the data for Dr. Bardwell and Mr. Herman for the preparation of their exhibits? A. Yes, I did.

Q. As just related by Dr. Bardwell? A. I did.

Q. You supervised that personally? A. Right.

—190—

Q. And checked it for accuracy? A. Right.

Q. And you furnished them the information which they requested? A. I furnished Mr. Bardwell, yes.

Q. And was that information accurate insofar as humanly possible? A. Yes; according to the records in the Superintendent's office.

Q. And you then forwarded that information by U. S. Mail addressed to Dr. Bardwell at his address in Illinois, is that correct? A. Correct.

Q. Now, Mr. Ford, your children were among those children who applied to white schools last September? A. Yes, one child.

Q. What is his name? A. A girl—Portia Patrice Porter.

Q. In what grade? A. This is her first year.

Q. And she allegedly had free choice? A. Supposedly.

—191—

Q. She registered in which school, now? A. In Whitehall.

Q. And how far do you live from Whitehall? Is it close to you? A. Yes; about the same distance as Lincoln.

Q. Equal distance from Lincoln, which is the negro school? A. Yes.

Q. And when did she register in Whitehall? A. When?

Q. Yes. A. The August registration day.

Q. It was on registration day? A. Yes.

Q. And a period of several days transpired, did they not, during which you had no notification other than she was going to be allowed to attend Whitehall? A. Yes—until Saturday, Saturday before Monday.

Q. You got your notice from the Superintendent on Saturday that your child was transferred back to the negro school on Monday, is that right? A. That's right.

Q. And that was true of the twenty-seven other, twenty-six other negro plaintiffs, intervening plaintiffs? A. I

—192—

think that's correct.

Q. And many of them are not like you—those that lived up here (indicating), about twenty of them lived up here in this zone right up here that they changed after we filed our exhibit, didn't they? A. Yes, sir.

Q. And they were sending them all the way down to South Jackson? A. Yes.

Q. Well, after we filed our motion, did the School Board make any effort to change and accommodate these twenty negro children, these twenty-seven negro children? A. Not to my knowledge.

Q. As a matter of fact, they resisted our motion most strenuously, didn't they, insofar as you know? A. Yes, so far as I know.

Q. At least your child is still going to Lincoln School? A. Yes.

Q. Now, Mr. Porter, do you know how many negro children, all told, there are attending school with white children in Jackson? A. No, I don't know the exact figures. It's a hundred and something.

—193—

Q. Approximately a hundred? A. Yes. I don't know the exact figures.

Q. There are better than three thousand negro children in the system? A. Yes.

Q. And approximately a hundred of them are attending white schools? A. A hundred or more.

Q. And none of the four thousand whites attending formerly negro schools? A. That's right.

Q. And the teachers are still segregated throughout? A. Yes.

Albert Porter—for Plaintiffs—Cross

Q. White teachers in white schools and negro teachers in negro schools, is that correct? A. Yes, that's correct.

Mr. Williams: I gather I am not to go into that question, though, Your Honor. We are still on just the gerrymandering thing, even though I have a plaintiff on the stand.

The Court: Well, if you have a situation where you have a witness who won't be available, the Court would indulge you, and let you bring out whatever

—194—

you would like to bring out in connection with other issues. It's obvious we are not going to finish today, if the witnesss won't be available at a future time.

Mr. Williams: I imagine Mr. Porter will be available, Your Honor.

The Court: All right, sir.

Mr. Williams: That is all.

Cross-Examination by Mr. Rice:

Q. You spoke of the number of county students, Mr. Porter, that have come to the city. There are about four hundred city people that went to the county also? A. Well, I had no way of knowing that. The records did not indicate it.

Q. You don't know that? A. No.

Q. How much have you paid Mr. Williams for his services?

Mr. Williams: That is objected to, Your Honor. He is not required to state how much he has paid me.

The Court: Well, he is entitled to determine, since

—195—

the plaintiffs are moving to be awarded attorneys'

fees, as we understand the law, they are entitled to determine whether or not they have incurred an obligation to pay a fee.

Mr. Williams: If the Court please, as I understood it, we were taking up these issues separately.

The Court: All right. If you want to object on that basis, the objection is good.

Mr. Rice: Then I would like to have the witness available.

The Court: All right. You will be available, Mr. Porter. Is that all?

Mr. Rice: That is all.

Mr. Williams: That is all I have.

The Court: Step down, Mr. Porter.

(Witness excused.)

Mr. Williams: I would like to call Mr. Merle Herman.

—196—

MERLE G. HERMAN, the said witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Williams:

Q. Sir, will you state your name, age and address, please? A. Merle G. Herman, forty-six years of age, 412 South Steward Avenue, Lumbard, Illinois.

Q. What is your occupation? A. I am Assistant Superintendent for curriculum instruction for the Villa Park School in Illinois.

Q. Mr. Herman, how large a school system is that in which you operate? A. Approximately sixty-two hundred children.

Q. Will you state your educational and professional background, if you please? A. I have a Bachelor's degree from McKendree College, a small liberal arts institution, and a Master of Arts degree from Washington University in St. Louis, Missouri, and about fifty semester huors of graduate work beyond that taken at Washington University. My experience is comprised of three years of teaching

in a one-room country school; four and a half years in the Army; four years as Principal and then Superintendent of an elementary school district just outside of East St. Louis, Illinois; five years as Assistant Professor of Education at the University of Oklahoma; two years as Assistant Professor of Education at Wall State Teachers College in Muncey, Indiana, three years at the University of Illinois and three years in my present position.

Q. I take it you have memberships in the usual professional societies? A. Yes. My main concentration is the Association for Supervision and Curriculum Development, National Council for Teachers, Illinois Educational Association, National Educational Association and a number of others.

Q. Are there any other matters in your background which you feel might be pertinent in connection with the matters about which we will make inquiry of you in this investigation? A. During the period of time which I have been in college work, I have worked on a number of school surveys in a number of different states. I have worked with zoning problems as part of those surveys.

Q. Now, were you asked to participate with Dr. Bardwell in a study of the Jackson zoning, City of Jackson, Tennessee, zoning and transfer plan, to determine whether or not

—198—

racial consideration had been indulged in in the preparation of these plans? A. Yes.

Q. Will you just state—explain to the Court the nature of your investigations and—well, before I get into that—perhaps I ought to get a little background.

Mr. Herman, what are the main considerations or bases for determining zone lines in connection with junior high schools? A. Well, the main consideration is to follow ordinarily the elementary school lines so that when elementary schools are then taken and six graders graduating go into junior high schools, then there is an integration of effort between the elementary schools and the junior high schools where orientation procedures might be developed, that is where sixth graders might go into junior high schools and get acquainted with it. The principals are able to work together in enabling a sufficiently easy transition from the elementary to the junior high school. Also from a guidance point of view, it is well that the schools have some associations that are teacher relationships and administrative relationships which should

—199—

be developed between the feeder schools and the schools into which the children are being enrolled.

Q. Is geography particularly important or topography at the junior high school level? A. At the elementary school level you must make provision in your boundaries for conditions which might affect the children from a safety point of view, in terms of any considerations, distance considerations and so on; whereas this is not so true at junior high school level. At this level they are old and mature enough to take care of themselves on the streets and actually to be alone without other people walking with them,

and this type of thing. They are capable also of using transportation agencies, and, therefore, you don't pay too much attention to the ordinary barriers that you consider at the elementary school level.

Q. What about the distribution of teachers? A. Well at junior high school level and at elementary level as well, the distribution of teachers is important in terms of whatever characteristics are exhibited. Race is one of those factors, and I think it should be considered. Just as we would distribute anything, one should distribute the teachers in terms of what abilities and talents and characteristics

—200—

they have so the school system gets the best distribution of those. I might mention another factor, and that is in relation to the race problem. I should think that parents would be affected strongly by the fact that you would have, say, a total negro faculty and total white faculty assigned to a school. There would be some general opinions and attitudes that would be held by parents as a result of whoever was teaching in that building. If you had a distribution in your faculty of the various talents and characteristics, then parents would not be likely to look upon the school as being different from another school and, therefore, want their children transferred from one school to the other.

Q. What you are saying indicates, in effect, in addition to what it actually says, that it also indicates that there is, in effect, a stigma attached to a school by continued teachers segregation, is that correct? A. Yes, this is according to whatever biases or prejudices that the parents or the people in the community may have.

Q. Would you say in a school system which had a record of two years of desegregation and all of the white children

—201—

transferring out of the negro schools, would you say that

that indicated a favorable or unfavorable attitude? A. This would infer an unfavorable attitude on the part of these parents.

Q. And would you say that continued segregation of teachers would make this more or less likely to continue? A. It would maintain the status quo. Whatever that attitude structure is, it would remain, and perhaps be heightened somewhat.

Q. Would you say that continued teacher segregation is a characteristic, more or less, of a segregated school system? A. Yes. I think that research would bear that out.

Q. Now, have you looked at the zone lines for the City of Jackson junior high schools? A. Yes, I have.

Q. Based on the considerations which we have discussed, what are your conclusions regarding those zone lines? A. Well, there seems to be a very distinct tendency for the lines to follow the residences of negroes and whites—in other words, separating the two. Where there is a large negro population, there tends to be lines drawn to maintain segregation in the schools that serve those areas.

—202—

Q. What would be the effect of free transfer system superimposed on—predicated on race and superimposed on those zone lines? A. Well, the transfer system ordinarily would operate just to maintain whatever the attitude structure is of the people who have children in those schools. If zoning would not accomplish what some people might consider to be a proper solution to their own personal problems, they could then use transfer as a means by which they could solve their problems.

Q. And thereby perpetuate segregation in the school system? A. This would totalize segregation.

Q. Has that, as a matter of fact, apparently been the case, in case of the elementary school grades which have been desegregated in the City of Jackson School System? A. It isn't total, but it is close to being total, and at the junior high school level it is apparently true.

Q. Now, Mr. Herman, will you state whether or not the proposed junior high school zoning plan that you have

—203—

mentioned violates the principle that you have suggested of feeding from elementary school zones? A. Yes, it does, because the lines of the elementary schools are not consistent with the lines which separate the zones of the junior high schools.

Q. Have you formulated any thought on your own about a more adequate zoning system for the junior high schools based on that principle? A. Yes. In looking at the business of establishing feeder schools and looking at the capacity and enrollments of the present schools, there are some clusters which, of course, are subject to the attitudes of those who are doing this, but there is a general clustering picture which could be presented, not necessarily as a hard and fast thing, but as an example of the general idea, which I think is proposed by the principle of certain schools feeding into certain junior high schools.

Q. You have some exhibits also that you would like to show at some point in your testimony, and, if so, if you will advise me, I will give you an opportunity to do so, if you think now would be a good time. A. Fine. I could show those right now.

Q. Were those exhibits prepared as outlined by Dr. Bardwell? A. Same procedure. This, again, is a basic map

—204—

which we have been using. Now, in order for you to get

some idea of what I have been talking about, I would like to drop over the map the total junior high school enrollment in the district. This is the negro enrollment for junior high school children. Now, if you look at this closely and then you watch as I drop over the proposed alignments, you see how the alignments in general tend to follow the pattern of negro students in the community. One of the things that should be noted is there is a large group of children here who are attending Merry Junior High School. All of the children who are on here are all attending Merry Junior High School at this time or have been during this past year. Now, this is one thing interesting to know, especially the children who are outside the line here, and who are outside of the lines over here (indicating throughout).

Now, here is the white enrollment—here is the white elementary, and you notice the pattern again, and you notice some of the empty spaces in here. This is sort of an empty area in here, and there is an empty area right in through here. Now, again, if I drop this pattern over, that is the

Merry Junior High School lines, you again see how those lines tend to follow or take in those open areas which I pointed out. Now, if we put the combined enrollments on the sheet and then look at the picture, you again see how the lines tend to follow the pattern which I mentioned before. There is a general pattern, it seems, for negro children to attend Merry Junior High School and for white children to attend the other two junior high schools.

This is Exhibit No. 20. Do you have any other questions on that?

Q. No. I believe you have another exhibit prepared. A. Yes. Again we have the basic map as we have looked at it before. Now, here is Jackson Junior High, and the children

who attend Jackson Junior High are shown here, that is the white children. You can see there is a number of white children who are living outside of this particular area who do come in here to go to school. In other words, they are transferring out of what may be classified as negro areas or areas where there are negro children, and they are coming into this building.

Now, here we have Merry Junior High again and this —206— is similar to the one we projected before. Now, let me drop these two down—I should show Tigrett as well. This is Tigrett, and again you will notice outside of Tigrett there are white children who are transferred in this school for some reason, but they are from outside the zone and are attending Tigrett Junior High. Now, if we drop all of these on here, and again you look at the zone lines, you again see the picture, which gives you a look at the total district in terms of white and negro children and where they live and where they attend school. It is an accepted fact here, I think, that white children attend white schools and negro children attend negro schools.

Q. With a continued transfer system in the City of Jackson, is it along the lines of an absolutely free transfer system superimposed on that zone system based on race, even though it works both ways—is it your opinion that the condition of segregation will continue to exist? A. Yes.

Q. Well, the zone lines have contributed to that condition of segregation? A. Yes. The zone lines would contribute to it and where they are not effective the transfer system could be used for that purpose.

—207—

Q. And those dots, I believe, on there, just as on the other exhibit, represent the general area where five negro or white children respectively live? A. Yes. The five children would be clustered around where the dot is placed.

Q. Do you have any further exhibits to show on that machine? A. No, that is all.

Q. Would you take the stand again, please, Mr. Herman.

I want to digress just a moment. I believe you stated that you had some thoughts about the way junior high school lines could be drawn without taking race into consideration. Will you state that to the Court? A. Well, first of all, I assume that there would need to be some changes in the elementary school zoning, whatever they might be.

Q. What is wrong with the elementary school zoning that seems apparent to you, based on what you know of it and what you have heard here today? A. Well, the elementary school lines are built in such a way that they tend to promote segregation. One can never deal with the motivation behind them. It is just an apparent type of thing

—208—

that strikes you when you look at the information that we have put together.

Q. And you say that affects the drawing of the junior high school lines? A. Well, yes. The thing is that the present elementary school lines are not consistent with the junior high school lines. I consider it is a basic violation of the principles that we have mentioned before. The fact is that elementary schools, as they are drawn, even if they were centered and clustered to feed into junior high schools, would not facilitate integration as such.

Q. Now, when you say facilitate integration, do you mean by that—well, state what you mean by that. A. I would say that the proper districting of the schools in terms of basic principles, such as the idea that the distance a child lives from the school being an item of priority in assigning a child.

Q. And not whether or not he is negro or white, is that correct? A. Correct.

Q. What would you propose, assuming that a compact, that the elementary lines were drawn in compact areas about the schools as was indeed suggested by the Supreme

—209—

Court in the Brown case? A. Well, in clustering the zones around the junior high schools as one kind of pattern that could be developed—Parkview, Washington-Douglas and Whitehall tend to fall into this area around Jackson Junior High School. They are close to it. They could be good feeder areas, and I am assuming again that the elementary zones would not be exactly as they are at present, but that area in there would tend to be a good feeder zone for Jackson Junior High. In terms of numbers of children, there would be consistency here too. There wouldn't be overloading of the capacity of the building. Highland Park, West Jackson and South Jackson might be appropriate for Tigrett and Alexander and Lincoln appropriate for Merry Junior High School. These are three different cluster patterns that could be developed.

Q. In your opinion would that be the way that the junior high school zones would be developed objectively, without regard to the racial character of the neighborhood? A. Yes, and not only that, but from an educational point of view, it would be sound.

—210—

Q. Why? A. Because of the possibility of developing this interlocking relationship between feeder schools and the schools into which the children are going.

Q. Now, going to the question of the country transfers, I believe you reviewed the information on that which has been introduced here as Exhibit 20. Will you take a look

at Exhibit 20, and make sure it is the same thing that you have reviewed, and then state your conclusions in reference to the handling of negro and white students with regard to county transfers as they might affect the zoning problem? A. I have taken these figures and done a little bit with them, which might be somewhat interesting. For instance, Alexander, which is formerly a white school, a hundred and sixty-nine white children are transferred there from the county and no negro children. In Highland Park three white children; no negro children. In Parkview, fifty white children, no negro children. In West Jackson, seventy-one white children; no negroes. In Whitehall, twelve white children and no negro children. These are formerly white schools and no negroes from the county have been placed in there, but a considerable number of white children have been transferred to those buildings. At Lincoln, which

—211—

is primarily a negro school, no whites, but one negro is there. In South Jackson, no whites; seven negroes. In Washington-Douglas, no whites; no negroes. But, here again, we have only negro children who are transferred from the county into these buildings. Jackson Junior High School has thirteen white children transferred from the county and no negroes. Tigrett has fifty-five white children and no negroes. Merry has no white children and four negroes transferred from the county.

Q. What does this evidence about the policies of the School Board in assigning county children to the city schools? A. Well, there is a pattern here which is a total pattern—no negro children are assigned to former white schools, and no white children are assigned to former negro schools. Also, there is an intimation, at least, that

county children are given priority over children who actually reside within the district in terms of assignment, although we aren't dealing with transfer problems, transfers we have studied have been refused into some of these schools from within the district, but county children have been transferred.

—212—

The Court: You say within the district, you mean within the city?

The Witness: Yes.

By Mr. Williams:

Q. And to the extent that the Superintendent, as you heard him on the stand, gives as an excuse or failure to adjust zone lines into compact areas, that there might result a lack of capacity into the schools, does this racial transfer policy have an effect on that? A. Yes. There is a large number of transfers, for example, in Alexander—a hundred and sixty-nine white children are transferred from the county into that building; that's a very large number of children for one building.

Q. A hundred and sixty-nine out of some four hundred total enrollment? A. I will check my figures.

Q. Was it Alexander? A. Yes.

Q. A hundred and sixty-two—well, that is all right.

Now, how do you compare the handling of transfers within the school district with handling of county trans-

—213—

fers? A. Well, in general, many transfers of negro children to white schools were refused, but at the county level, it seems—I don't know how many might have been refused, but all white children went to all-white schools.

Q. Suppose that the Court—I suppose you are aware—you have read the Court's original decree in this case, have you not? A. Yes.

Q. And you are aware of the Court's order that regardless of any transfers that a child who resides in the district would be entitled, would have an absolute right to attend the school within his district? A. Yes.

Q. Now, if racial zone lines were drawn so as to affect the racial character of that district, and then the question of capacity were raised, capacity of school with regard to these zone lines, what would be your conclusion about this? A. Well, in the main, virtually all of the schools, with the exception of Merry and South Jackson have some room in terms of capacity. In fact, there is quite a bit of flexibility, which would enable a great deal of transfer of some kind to take place in the district without affecting capacity levels,

—214—

without even approaching capacity levels. Some schools that accept a relatively small number, but many of them could take a large number of children in terms of transfer.

Q. So that transfers do not—so that school capacity does not appear to propose a considerable problem in connection with re-zoning of the Jackson School System, is that correct? A. No, it doesn't.

Q. What factors do you deem to be important in connection with them? A. With the zoning of Jackson?

Q. Well, that's right, you weren't going to get into elementary schools, were you? A. No.

Q. In reference to this matter of leaving school children in schools and transfers, what is your educational views as an educator concerning the idea that children should be permitted to remain in a school that they have historically attended, or where their brothers and sisters are

already attending? A. Well, I know there was a stipulation that children might attend a school if their brothers

—215—

and sisters were in attendance and in a building.

The Court: Not in the Court's decree—in what apparently was actually done, you understand that?

The Witness: Yes, sir.

Such a principle being applied in this case would mean in many cases that integration would be forestalled in a way and that whatever the status quo is would tend to remain for a considerable period of time. I have an unusual family in that I have six children, which most people do not have, but if you compute on the basis of my own family and the distribution of children, if my youngest child attended the same school as my oldest daughter, then that would be twenty years at one school.

Q. This policy, in effect, is tantamount to a grandfather clause? A. Well, it represents the same kind of idea.

Q. Is there anything that I have overlooked that you would like to say? A. Well, the junior high enrollment for the next four years will tend to remain constant at

—216—

about one hundred children above the present enrollment.

Q. How do you establish that? A. Through the facts and figures which were in one of the replications. If I remember correctly, there are five hundred and eighty sixth-graders in the school system at the present time. It would be about six hundred and fifty to six hundred and seventy-five for the next four years or so. So you have a constant factor here involving the junior high enrollment. There is

a possibility, of course, of a building being built in outside areas, as Mr. Huckaba said, but the known facts are that the enrollment would be about the same for four years, about a hundred above the present enrollment.

Q. I am glad you mentioned that. I am going to get into elementary schools a little bit. I will ask you whether or not, based on Mr. Huckaba's figures, you took a look at the known figures and the predictions with regard to increases in elementary schools within the school districts? A. In looking at the number of children enrolled by grade level, it appears that the greatest changes will occur in South Jackson, that is South Jackson will tend to grow a little faster than the other schools. Whitehall also will

—217—

grow, and it would almost double by the time you go down to the first grade level.

Q. That was South Jackson and what? A. South Jackson and Whitehall. I don't remember what the others were. Could I get another sheet that I had there?

Q. Yes. A. South Jackson, Whitehall, Parkview—some growth in Parkview and Highland Park would show some growth. According to the known facts and figures again, the overall enrollment change varies only approximately a hundred and fifty to two hundred in the total school system from sixth grade to the first grade. Two hundred children distributed among all the schools is a relatively small number.

Q. Distributed among eight schools? A. Yes.

Q. One more thing—what about children—what about these annexed areas in the county? You have heard testimony regarding that. Does that tangibly and significantly affect the problem of zoning now? A. Well, the construction of a school, as was mentioned, will affect enrollment.

There isn't any doubt of that, because people will tend to

—218—

build around wherever a school exists. But in the outer areas it would be difficult to predict where the building is going to take place, and even if you did, you couldn't predict how much, and if the enrollment were substantially increased because of the construction in the outer reaches of a community, ordinarily you would build schools or small feeder schools in those areas.

Q. I believe you have already stated that in your opinion continued faculty segregation would be detrimental, would not be educationally sound? A. I agree with that, yes.

Mr. Williams: You may cross-examine.

The Court: Well, gentlemen, it is 5:00 o'clock. Obviously, we can't finish this hearing today. The Court would like to accommodate everybody possible.

What about next Friday? We have cases set all during the week next week. Can you come back next Friday, Mr. Williams?

(Unreported discussion.)

—219—

The Court: On the record. Let's set this hearing tentatively for next Friday and then if it turns out that someone can't make it, we will move it up. We would like to hear from you as soon as possible as to whether you can be here, and then if you can't we will set it up for the following Friday.

Mr. Clerk, adjourn until 9:30 Tuesday morning.

(Adjournment.)

Merle G. Herman—for Plaintiffs—Cross

* * * * *

—226—

Mr. Rice: We submit to the Court that his testimony in regard to the faculty integration and the effect upon children and parents and what-not is not substantiated by his qualifications in this matter.

The Court: Well, I think it would go to the weight of it, probably, Mr. Rice.

Mr. Rice: All right, sir.

Q. Now, Mr. Herman, before we get into the question of Jackson, I want to talk to you just a little bit about your own area in Illinois. I believe you say you are from Villa Park? A. Yes, sir.

Q. Now, that is, I believe, a part of greater Chicago, is it not? A. It is a suburb of Chicago, a western suburb.

Q. I have here a very official Phillips 66 road map, and it looks to me like Villa Park is right at the edge of Chicago in a westerly direction? A. Yes. There are two or three different communities between Chicago and Villa Park.

—227—

Q. Oak Park, Melrose Park, North Lake, and perhaps Villa Park? A. Well, Elmhurst, which is a fairly large community, is also in between. There are other communities which I do not think would be listed on the map.

Q. Now, the gentleman that testified here, Dr. Bardwell, from Arlington Heights—that is also a suburb of Chicago, is it not? A. Yes.

Q. I will ask you, Mr. Herman, if in Illinois your various communities touching Villa Park and Arlington Heights receive state aid in the operation of their schools? A. Yes, sir.

Q. And it is part of the overall school system of the state, is it not? A. Yes.

Q. Now, from time to time, would Villa Park, for example, transfer a student with, say, Addison? A. Yes.

Mr. Williams: I didn't hear that last question. Transfer a student with what?

Mr. Rice: Transfer a student with Addison.

—228—

The Witness: Yes.

By Mr. Rice:

Q. And from time to time, would Villa Park exchange a student with Lombard? A. Yes.

Q. They are not, however, in your district, are they? A. Yes. About a fourth or fifth of Lombard, maybe more, would be in the Villa Park district. The school district is School District 45, and really is not Villa Park School District, as such, officially titled.

Q. Would School District 45 exchange students from time to time with adjacent school districts? A. Yes.

Q. Now, in order that we will know somewhat about what we are talking, how many negroes do you have in your school district? A. I would think maybe ten or twelve, somewhere in there.

Q. And how many children are in your school district altogether? A. Sixty-two hundred.

Q. Maybe we ought to send Mr. Huckaba up there to help you. Do you think that would be a fair statement?

Merle G. Herman—for Plaintiffs—Cross

—229—

Mr. Williams: That's objected to, if Your Honor please.

The Court: Objection sustained.

The Witness: I might say in this respect, I have worked with a large number of communities which did have a substantial negro population—Oklahoma City, New York City, which has a large number of negroes. The question, as far as I am concerned, is not that I haven't worked with school systems that had negro population.

By Mr. Rice:

Q. Well, let me ask you this question: You are having a good deal of unrest in Chicago and its environs over the question of the mixing of the races in the schools, aren't you?

Mr. Williams: That is objected to as being incompetent and irrelevant.

The Court: What is the purpose of that, Mr. Rice?

Mr. Rice: I want to see what he has recommended in Villa Park to alleviate this condition.

—230—

The Court: Objection overruled.

Mr. Williams: May it please the Court, this witness has not testified—in the first place, community hostility is not a part of this—

The Court: (Interposing) We recognize that.

Mr. Williams: And in the second place, this witness has testified only to the question of technical problems of zoning and the question of teacher-desegregation and its impact on education. The

question of unrest in a community in Chicago or Villa Park is entirely irrelevant to any issue upon which he has testified.

The Court: Well, we think this, Mr. Williams: We think in cross-examining an expert witness, you can test him by going pretty far and broad on what he thinks about different issues which related to that one, which is testified about, and in addition to that, if Mr. Rice here goes outside his direct examination, he will make the witness his witness, and he can't lead him any further. That's the rule in Federal Court.

By Mr. Rice:

Q. Mr. Herman, since your school districts interchange

—231—

students in the Chicago area and you have about four million, three or four million people there, don't you? A. Yes.

Q. My only question to you when you have a school district of sixty-eight hundred people and only ten negroes in it, what have you done to correct that situation in your district? A. Well, we do not have substantial negro population, but we do expect a negro population within the next few years. We, in our Board of Education, have planned for this influx. We have built our policies on this expectation. We have adopted materials in the schools already. We have adopted multi-ethnic materials, which would attempt to be a forerunner here. In other words, we have made plans for this to occur, and we expect it to occur within the next five years.

Q. My question to you is, what have you done to bring it about now?

Colloquy

Mr. Williams: That's objected to, if Your Honor please. I don't see how that is relevant, or how a School Board anyway would be expected to try to change residential patterns.

Mr. Rice: If it please the Court, that's the very

—232—

thing that Mr. Williams is objecting to here. The negroes in the City of Jackson live in residential areas just exactly like they do in Villa Park.

The Court: We understand that, but how would it be relevant, what the town of Villa Park has done with respect to effecting affirmative integration in their particular instance?

Mr. Rice: Because that's what this witness tells us we should do, and how to do it, and we just want to know if he practices what he preaches.

The Court: You mean you are asking that as a matter of impeachment of his statement?

Mr. Rice: It goes directly to his qualifications as an expert.

The Court: Well, that's borderline as to relevance, but we believe it is close enough, so we will let you pursue that.

The Witness: Where I happen to be employed as of here and now isn't the relevant thing. After all, people move from one job to another, and because your present job is not devoted to the problems of

—238—

segregation, it doesn't mean that you have never dealt with them, or worked with them, or had anything to do with them.

By Mr. Rice:

Q. My question is that you are now Assistant Superintendent of School District 45 in Illinois? A. Yes.

Q. And, as such, you have the power to do these things that I have just asked you to bring about integration, do you not?

Mr. Williams: That's objected to. He says, "Do these things". I don't know what he is talking about.

The Court: I think what he is referring to is taking affirmative steps to see to it the schools are integrated.

Mr. Williams: May it please the Court, if there are only ten school children, ten negro children in the district, I can't understand the relevancy, or what basis there would be—

The Court: (Interposing) Mr. Williams, the witness has testified that in his opinion as an expert it

is desirable to affirmatively bring about integration, and that's a view that is strongly held by many people in this country, and you have argued the views to the Court yourself. Now, Mr. Rice is asking him if he believes in that, what has he done to see to it that they have more affirmative integration in his district. The answer may be that he has done nothing and could do nothing because of the actual situation, but Mr. Rice is entitled to ask him the question.

Mr. Williams: If Your Honor please, I would like to say just finally that this witness is testifying as an expert educator. He is not testifying as a politi-

cian or real estate man, and the question whether or not there should be more negroes residing in School District 45, I respectfully submit is an entirely irrelevant question.

The Court: That's not the question. Conceivably, they could make an effort to go outside the district to get some negroes in the district to accomplish integration, and Mr. Rice is asking him about that,

—235—

and we think that he can ask that.

Mr. Williams: Very well, Your Honor. That is exactly what I object to, though.

The Court: All right, sir.

By Mr. Rice:

Q. Mr. Herman, as Assistant Superintendent of School District 45 in Illinois, you do have something to do with the policy making of the school district, do you not? A. Yes, sir.

Q. I believe my question to you was, what have you done to accomplish greater integration in School District 45? A. Well, as I pointed out, we really do not have the problem. All we have done is set up a policy structure which will handle the problem when it arises.

Q. But, just exactly when that will occur, you don't know? A. It will occur within the next five years.

Q. Have you made any effort at all to accomplish greater integration in School District 45? A. We haven't needed to. We only have ten to twelve children, and they are thoroughly integrated.

Q. Well, I realize that a good many experts in this field are situated like you are, without the problem, but you have

—236—

made no effort at all to do anything about it? Have you recommended anything? A. Policy structure. This is the only role which an administrator has in the school system, is development of policy, and then the pursuance of it.

Q. Now, of these six or eight children that, negro children, that you have in your district, how many do you have in any one school? A. Most of them reside in one school area.

Q. Who is your Superintendent there? A. Mr. Crandall.

Q. Let me ask you this, Mr. Herman: I would like to know, and I expect the people in Villa Park would like to know—what has Mr. Crandall done about this? A. He, too, has worked on policy structure.

Q. Has there been any objective move made, actual concrete move made to accomplish greater integration through changing your district? A. Only policy structure.

Q. With that many negro students in Chicago, why haven't you, Mr. Herman? A. I have nothing to do with Chicago.

Q. Well, with the adjacent community. A. I do not

—237—

reside in Chicago. It has nothing to do with our school district. We are entirely separate and apart from Chicago.

Q. How far do you live from the nearest negro community if you have such there? A. I would say five miles.

Q. What community is that? A. I think it would be Maywood.

Q. Well, what effort have you made with Maywood to interchange students to accomplish greater integration?

Mr. Williams: If Your Honor please, I assume that my original objection obtains to all of this line of questioning?

The Court: Yes, sir, it certainly does, absolutely.

The Witness: My job is within my own school district. I have nothing to do with other school districts.

By Mr. Rice:

Q. Except Jackson?

Mr. Williams: That is objected to, if Your Honor please.

The Court: I believe that is improper, Mr. Rice.

—238—

By Mr. Rice:

Q. How did you get interested in Jackson, in the first place? A. Would you like to hear the whole story?

Q. Yes. A. I was called by the same gentleman who called Dr. Bardwell, Mr. Leberman.

Q. Now, let me interrupt. Who is Mr. Leberman? A. I think he is Director of Professional Studies at Rhode Island College in Providence. He called and asked if I would participate as an expert witness in a case involving integration in Jackson. I told him that I did not have the time, and that I didn't think I would get involved. He said, "Well, think about it, and I will call you back tomorrow."

That evening, I went to meet with a church group which meets regularly, and in the course of the discussion, it dealt with what one's Christian commitment in a community is, and in this discussion I posed them with this particular problem, and I had a number of times intimated to them that in the group that I did not approve of some actions which were being conducted in society, that I felt

—239—

when a group had a problem, that the problem should be solved in the courts, and they pointed this out to me, because I had brought this up before. They also pointed out to me that I should do what I thought I should do in terms of my Christian commitment. The next morning when Mr. Leberman called me, I had made up my mind.

I said, "Yes, I will participate, but you must remember that whatever I do is completely based on my own opinions. I have no obligation to anyone at any time, anywhere, and I will deal only with the facts as I see them."

Subsequent, Mr. Williams called me to ask me if I would participate.

Q. Now, are you paid for this service? A. Yes.

Q. What will you be paid? A. I have not been paid yet. I have only been paid the expenses which I have incurred, and I have submitted a bill to Mr. Williams.

Q. By whom are you employed? A. Mr. Williams, as far as I know.

Q. You did not talk to the gentleman that Dr. Bardwell

—240—

talked with from the National Association of Legal Aid Society? A. No. I might say the first time I met Mr. Bardwell was that he called me and told me that he understood the two of us were going to go to Nashville, and he said he would meet me at the airport, and that's the first time I met him.

Q. He got in touch with you, Dr. Bardwell? A. He called me, yes.

Q. Now, this religious meeting that you attended, that was in Villa Park? A. Lombard.

Q. How many children do they have in the schools of Lombard? A. I haven't the slightest idea.

Q. How many negro people live in Lombard? A. There are some. I have no idea. I have very little contact with the village of Lombard, outside of my church affiliation.

Q. To what church do you belong? A. The First Methodist Church.

Q. That's a fine church. I belong to that myself.

How many negroes belong to the First Methodist Church in Lombard?

—241—

Mr. Williams: If Your Honor please, we are going far afield.

The Court: Objection sustained.

By Mr. Rice:

Q. Now, let's see the view-graph here. Mr. Herman, you stated in your direct examination that at the elementary school level you must make provision in your boundaries for conditions which might affect the children from a safety point of view in terms of any consideration, distance consideration and so on; whereas, this is not so true at junior high school levels.

Now, are you acquainted with the street structure within the City of Jackson? A. To some degree.

Q. Would you agree, or disagree, that the boundaries of the elementary school districts which are shown on there in green, such as this (indicating) by and large are major street thoroughfares? A. On some occasions, that's true, and on others, it is not true.

Q. Then, where is it not? A. The one point which we

—242—

discussed before for this area right in here, for example. The children who live on the other side of this area, for

example, attend over in here. There are situations of that kind. (Indicating throughout).

Q. My question to you is which one of these boundaries is not a major street? I realize that you object to the way that it transfers pupils. A. It isn't only just streets. There are other matters that you take into consideration. There has been some consideration of this in other areas where this is not particularly important.

Q. What is the boundary between South Jackson and West Jackson district, do you know? A. It's this way here, this street here (indicating). It is a major street.

Q. Well, for example, what is the boundary between South Jackson and Whitehall—I mean South Jackson and Washington-Douglas—South Jackson and Whitehall and between Alexander and Lincoln? What is that boundary right there (indicating)? A. It's a main thoroughfare and railroad tracks as well.

Q. Then I will ask you if the boundary between Lincoln and Alexander running to the north, if that is not a rail-

—243—

road track? A. It is a railroad track, yes.

Q. Well, you say in there that we should take into consideration thoroughfares of that type. Now, have we not done that? A. Well, let me point out to you that inconsistencies are involved here.

Mr. Rice: If the Court please, I would like to have him answer the question yes or no, and if he wants to explain, then he can explain any way he wants to.

The Court: What was the question?

Merle G. Herman—for Plaintiffs—Cross

By Mr. Rice:

Q. If we have not used major thoroughfares in dividing those districts. A. You have. But you have not been consistent in the use of them. For instance, you used the railroad tracks, and then you suddenly use a thoroughfare instead. In this case, for example, you use the railroad tracks out here where the population is rather thin. Then you suddenly make a move over here to take advantage of what you call a major thoroughfare, but you have not continued to use the tracks, and in some cases, without too

much consideration to the population that is involved—for instance, if you are going to use the tracks, then you would use the tracks. If you are going to use a major thoroughfare, you use that major thoroughfare. Now, there is a choice of which major thoroughfares you would use as well, which is another kind of problem. You have deviations from the use of them. Here are deviations from the use of this one, for example (indicating).

Mr. Williams: Indicate it, if you will, sir, for the record, when you refer to something on the map, indicate the line you are referring to.

The Witness: I am not too familiar with the street names.

Mr. Williams: Well, at least indicate the lines between which school districts you are talking about.

The Witness: Well, this is between Alexander and Highland Park. There has not been a continued use of the same thoroughfare, but a deviation from it, and that thoroughfare has not been followed as the line continues south where two—this is double

—245—

thickness here, so I can't see the name of the street here, but I am just trying to make the point that you have not really used those consistently.

The Court: On that point there, Mr. Herman, that line between Highland Park and Alexander, according to that map, there are no negroes living either side of the line, so you don't mean to indicate that line was drawn that way to effect maximum segregation?

The Witness: I am dealing with the matter of establishment of the boundaries without regard to race as such. I am merely pointing out if you are going to use a boundary, you should use it consistently.

The Court: That might be important to you as an educator, but there is no question but that Jackson can draw the line where they want to as between white people. The question we have to determine is whether or not they have so drawn their lines between negroes and white people so as to effect an unconstitutional gerrymandering.

—246—

The Witness: Well, the point is involved—with the point is involved here, if you use a feeder system in the junior high schools, then it would make a difference as to where the elementary school boundaries are.

The Court: Well, go ahead.

Mr. Williams: Well, moreover, if Your Honor please, I submit that you can't determine it solely on the purpose of whether or not the line runs

through an all-white neighborhood, because you have the question of school capacities.

The Court: That is what Mr. Herman was saying—if you are going to have the feeder system, this question of where the lines are drawn will affect that. But the Court's comment was if we get to investigating everything at that level, this whole question as to gerrymandering can get complicated.

Mr. Williams: I would submit that the line might be drawn one way in an area where only white children are involved as between this school in order to achieve a certain effect and another way in a school area where there is a mixed population, taking

—247—

into consideration the capacity in the school.

The Court: All right. Go ahead, Mr. Rice. Go back to your cross-examination.

By Mr. Rice:

Q. Mr. Herman, you looked at the school load, teacher load, class load background that we filed, I believe, did you not, in connection with the elementary schools? A. Yes.

Q. Now, if you will just forget the race situation for a moment, the balance was fairly good, wasn't it? A. Yes.

Q. Now, when you started the districting of school districts, if you lined up ten superintendents and each one to do it individually, you would get different plans from each? A. Yes.

Q. One man might take them one way, and one man might take them another? A. This is true. But the deviation might not be as great as one would think.

Q. Now, directing your attention a moment—you singled out, for example, the departure from what is North Royal and South Royal Street as a boundary between Alexander

—248—

and Lincoln. Now, the figures show that Lincoln is full, do they not, right now? A. I will have to refer to my notes.

Lincoln has a capacity, according to the figures which we received from the school district, of eight hundred and seventy-five, and the enrollment presently is six hundred and seventy-two; so you have an under capacity of two hundred children.

Q. That's gross capacity—assuming they were divided in the places equally so that you could put them in there. A. These are the capacity figures given by the school system.

Q. Now, Alexander School district is what? A. It has a capacity of seven hundred and fifty. The enrollment is six hundred and fifty-two. You have an under capacity of just about a hundred children.

Q. About the same thing. A. No. There is a difference of a hundred under capacity in one, and two hundred under capacity in the other.

Q. If they are both under capacity, what would we accomplish by moving a hundred over to another school? A. Well, if you are going to use the main thoroughfares

—249—

as the line, then you should continue to use the main thoroughfare. This school, of course, is sitting here right on the edge (indicating).

Q. That's a junior high school. A. I know it is. But it is in a relative position to be discussed, and this school sits right over here on the edge of its own district (indicating).

Merle G. Herman—for Plaintiffs—Cross

Mr. Williams: Can you, please, sir, refer to the names of the schools if you can recall them, Mr. Herman?

The Court: You say that Alexander is on the edge of its district.

The Witness: Well, let me explain here. Let me get my schools straightened out.

The Court: Would this help you any (indicating)? I have a map here.

By Mr. Rice:

Q. This is Lincoln, Alexander, Whitehall, Parkview, Washington-Douglas, South Jackson, West Jackson (indicating). A. Well, let's just take the distance factor involved here. Here is actually a main thoroughfare—main railroad, main division line (indicating) that could have

—250—

been used. Actually, there is a deviation from it coming over here to the west. Now, I see no reason for this line to go over here like this when the distance for these children to attend this school was actually increased and the distance here is much shorter anyway (indicating). A thing like this just seems to me to be somewhat out of line.

Mr. Williams: May it please the Court, I don't want this to become burdensome to the Court, but I would like to ask Mr. Herman—he has given important testimony there for the record, and he hasn't identified a school or a line in connection with it. If the Court will permit, I would like that to be done.

The Court: What he is saying, basically, as the Court understands it, is that the railroad on the west

side of the western extremity of the proposed Lincoln zone, which is west of the railroad, in his view should be put over into the Alexander School district, and use the railroad as a borderline between Lincoln and Alexander all the way down to the north line of Whitehall.

Mr. Williams: Yes, sir, that's what he has testified.

—251—

By Mr. Rice:

Q. Would you agree, Mr. Herman, that a man of the same qualifications that you have might just as well adopt a contrary view? A. One could adopt a contrary view, but he would have to have a reason for it.

Q. It's just a matter of opinion, isn't it? A. No, I wouldn't say it is a matter of opinion. You are either using a type of geographical item as the basis for your decision, or you are not.

Q. Now, then, all of the exhibits which you filed—yes, you testified to them, that you and Dr. Bardwell filed here, as far as you are concerned, were predicated upon the educational practice of feeding junior high schools, is that not true? A. Those exhibits weren't predicated upon it. Those exhibits were to indicate the facts as they exist, where the population was, and where it was attending school. Those exhibits did not, in any way, set up a plan for the districts to feed anywhere.

Q. Well, getting back to the exhibit, you say it reflected where the people live and where they attend school. Now,

—252—

that's not the same thing. Now, exactly what was on your exhibit? A. We had the school zones and where the children lived who attended in a particular school, that is we

here (indicating). They go up the railroad to Highland, up Highland Avenue to Fairmont and out to Royal and on out of the city. The district line between West Jackson and Merry follows the G M & O Railroad from the south city limits to Preston, out Whitehill to the city limits. and

—264—

all those are major streets or railroads. What would you do with it? A. As I have testified before with junior high enrollment, you do not need to pay so much attention to geographical features, primarily, because the children are at an age level where they are capable of taking care of themselves fairly well on the streets and not only that, they should be in a position where they should be somewhat independent and should be taking care of themselves in regard to geographical obstacles and so forth. The fact is that this doesn't have to be the consideration. But there is the consideration of all the guidance functions which are related to elementary and junior high schools, the interrelated functions of the schools, which would, in general call for a general educational idea of feeder schools. This has been substantially my testimony previously, and I would have to support that idea again now, the feeder schools.

Q. I understand how you feel about the feeder schools on the junior high school system, but in the City of Jackson, we don't have that. We are concerned with the district boundaries betwen the junior high schools, and I wonder what you would do with it using the system we used. A.

—265—

I am concerned primarily with the education of youngsters who are involved, and I think it is better practice to have the feeder system and, in fact, it is such a general practice throughout the United States, I wonder about its lack here

The Court: Well, Mr. Herman, understand we are only concerned here with constitutional considerations. This School Board can run this school system any way they want to as long as they don't violate the Fourteenth Amendment to the Constitution and, therefore, maybe you or a great majority of the education people think that the so-called feeder system into junior high schools is desirable, but there is no constitutional requirement that they follow any particular practice in education so long as it is not constitutionally discriminatory. What I think Mr. Rice is asking you is—looking at the proposed junior high lines and just considering the issue of gerrymandering, and, of course, we understand that takes into consideration several factors—natural boundaries, which you say are less important in junior high schools, you have all these factors that you take into consideration. But what I understood Mr. Rice to ask you is what is wrong with what they propose. How do you do it differently? Is that what you are asking?

266—

Mr. Rice: Yes, sir.

Mr. Williams: May it please the Court, the issue of gerrymandering may take into consideration the failure to use the feeder system.

The Court: Do you want to contend that they have to constitutionally adopt the feeder system?

Mr. Williams: No, I wouldn't try to coach my witness by arguing the case now, if Your Honor please, but yes, sir, that would be one of my contentions, in effect, that in the junior high system they have followed a—

have the Parkview School, for example, that is we have all the children who attended Parkview marked on those maps.

Q. So it was shown on there. In other words, what you have is the end result of the transfer plan and the Court's order allowing those were in school at the time the original order to remain there, plus those who lived there. You had the end result, and that is what was shown on your maps. A. The facts in relation to a child, to their attendance in a school zone.

Q. But what I said to you is right, isn't it? A. Essentially, yes.

Q. You stated (reading) "I should think that parents would be affected strongly by the fact that you would have a total negro faculty and a total white faculty assigned to a school."

Now, how did you know that? A. Well, there are studies which indicate this to some extent.

—253—

Q. What studies? A. Well, I am not familiar with those studies. I have only taken the material out of administrative publications. The fact is, though, in any school district and from administrative experience, one can estimate that virtually anything in a school affects parental attitude toward it, parental cooperation and things of this kind.

Q. Now, have you checked over Jackson to see how it affects parents? A. No, I haven't. This is not really my job, as such; nor my testimony is not linked primarily with Jackson in this respect. My testimony is taken from general administrative direction as obtained from the literature.

Q. And did you make any of these studies yourself? A. No.

Q. Have you read any of these studies in toto? A. I have in the past, yes.

Q. Do you consider yourself an expert on this question? A. On parental attitude?

Q. Yes; about the race question. A. No, I do not, not in terms of parental attitude; that would be primarily in the realm of a sociologist.

Q. Is it of any significance to you that all of the newly

—254—

admitted plaintiffs to this lawsuit are negro and are seeking admission to schools which have all white faculty? A. Would you repeat your question?

Q. Is it of any significance to you that the new plaintiffs in this lawsuit who are all members of the negro race are seeking admission to schools which have an all white faculty? A. It is of significance, yes.

Q. It didn't seem to deter them any, did it? A. I don't see that it should.

Q. Then the question of faculty makeup, I believe you said, you didn't see that it should—was that your answer? A. I don't think that should be the important element to them. People who are requesting entrance in a school are looking at the educational program which is offered, the facilities, it's an overall kind of thing, and I do not know what their primary motivations might be.

Q. And the faculty makeup had no effect on it, did it? A. I don't know.

Q. It didn't deter them from asking, anyhow, did it?

—255—

Mr. Williams: Well, that's objected to, if Your Honor please.

The Court: Objection sustained on that.

Merle G. Herman—for Plaintiffs—Cross

By Mr. Rice:

Q. Mr. Herman, what is it that you are really concerned with in this lawsuit? Is it the mixing of the races? A. I am concerned with equal educational opportunity for every child in this country. I am concerned with basically the whole business of a child getting, not only equal opportunity to education, but the best education that a community can afford.

Q. Do you feel that that requires integration of the races? A. Under many conditions it would be necessary. As I understand it, the problem here is one of the Court having actually given an order to a school district in terms of desegregating its system, and the question is whether the school has done this, or has not. We have not discussed curriculum, so far as I know, nor teaching in the class rooms in any way, shape or form. If I were to testify on curriculum and teaching, then I would have made a thorough investigation of curriculum and teaching in the schools, which would have called for access to the schools, their programs, and actual observation of teaching and so

forth. I certainly couldn't have participated in such a thing because of the amount of time that would have been required.

Q. That question was not even projected to you, suggested to you. A. No. I have not worked with that.

Q. I mean there was no complaint registered to you with regard to the City of Jackson curriculum?

Mr. Williams: If Your Honor please, that is not before the Court. There isn't any question about curriculum except discrimination against negro chil-

dren in a curriculum, if you want to talk about that, in extra-curricula activity.

The Court: I thought there was some complaint about the actual curriculum in the schools that the majority of the negroes attend versus the schools where they have a majority of whites.

Mr. Williams: There was originally in this case, but not—

The Court: Not in this motion for further relief?

Mr. Williams: No, sir. The point here was dis-

crimination in extra-curricula activities and teacher professional activities.

The Court: All right. We don't have any question about curriculum itself, Mr. Rice.

By Mr. Rice:

Q. Since you are testifying as an expert, Mr. Herman, I would like to get just a little further into it. Do you actually understand the significance of the difference between compulsory integration and elimination of compulsory segregation?

Mr. Williams: That's objected to as being irrelevant and incompetent. This witness is not a legal expert. He is testifying as an educational expert.

The Court: Objection overruled. I think he can ask him if he understands the difference between those concepts aside from any legal definition of them.

Mr. Rice: That is all I want. I don't really think Mr. Williams knows the difference, but I want to see if Mr. Herman knows the difference.

The Witness: Let me begin by saying I want

—258—

you to repeat the question, but I do not know the legal differentiation.

By Mr. Rice:

Q. So you are primarily interested in obtaining a mixing of the races in the schools, are you not? A. That would not be my intent. My intent would be for all children to get the best education possible.

Q. Well, now, would you not say, Mr. Herman, that that's entirely possible in schools in which segregation exists?

Mr. Williams: That's objected to as being incompetent and irrelevant.

The Court: Well, I think so. Here is the theory on which I think Mr. Rice is entitled to examine the witness along this line to some extent—he has testified about his opinions as to gerrymandering, and I think in cross-examining the witness and testing him on those opinions, Mr. Rice is entitled to find out if in drawing his opinion if there was gerrymandering here wasn't he basically concerned with maximizing integration as opposed to abolishing compulsory segregation based on race, and it is

—259—

along that line that I think he is entitled to ask the witness this. In other words, that may be one of the things hat he has taken into consideration in giving his opinion that we have gerrymandering here, and I think counsel is entitled to ask him about it.

Mr. Williams: If Your Honor please, I would respectfully say that if he were of the opinion that segregation should be eliminated in the schools, certainly so, I feel—

The Court: (Interposing) Well, be that as it may, we think Mr. Rice's questions are appropriate up to this point.

Mr. Rice: Well, I believe I will withdraw the question.

The Court: All right.

Mr. Rice: Do we have the view graph?

The Court: Off the record.

(Unreported discussion.)

The Court: All right. Go ahead.

By Mr. Rice:

Q. Now, Mr. Herman, if you will look at that map and

—260—

look at the Washington-Douglas School, which is shown in the bottom right-hand corner, I will ask you if it is not an almost unquestioned fact that no matter how you district that school, it will be predominantly negro? A. No, I don't agree with that at all.

Q. Well, sir, now I direct your attention to the location of Parkview School, which is the one directly above it, and I will ask you how you can draw a line between those two schools, or how you could district Washington-Douglas without it being a predominantly negro school? A. I don't pretend to try to make something predominantly one thing or the other. I think you draw zone lines according to certain procedures. You take the distance factor, for example, and you give a great deal of consideration to this street

here, but when you get over to this point, then you suddenly avoid it, and actually you have children in the Washington-Douglas districts who are very close to Parkview School and are not permitted to attend it. They are zoned out of it. Distance seems to have been no factor. Main thoroughfares have not been consistently adhered to. Thusly, I think that there is some consideration of other factors that are involved here.

Q. Yes, sir, you are right. I will ask you if one of those

—261—

is not capacity of Parkview School? You have to fill the school up and use it, do you not? A. I don't think that has been the policy here either. Some schools are way under capacity and others are not. Parkview School has a capacity, according to the figures, of seven hundred fifty. It has an enrollment of six hundred and two. In other words, you have about one hundred fifty children under capacity. You have not used the capacity of that school.

Q. I direct your attention to Washington-Douglas. What is the capacity there? A. Five hundred twenty-five, and an enrollment of four hundred and two. You have an under capacity of approximately a hundred and twenty-five in round figures.

Q. Isn't that a pretty fair distribution between the schools? A. Not when you have the factor of distance and the factor of main thoroughfares.

Q. Now look at Whitehall. What is the capacity there? A. Three hundred and fifteen, and it has an enrollment of three hundred and six.

Q. So it is about full, isn't it? A. Yes, it is.

Q. And South Jackson is also at capacity? A. Close to

—262—

it—five hundred and twenty-two, and actually the enrollment is five hundred and forty-four—over capacity.

Q. Now, if you move one district boundary, is it not reasonably sure that you are going to have to move others? A. Yes.

Q. You just keep juggling back and forth, wouldn't you? A. Yes, you would.

Q. I believe you have stated earlier that taking the consideration of race out of it, the balance of the districting and school class load and teacher load is pretty good. A. I didn't say in terms of zones or districts. I mentioned class room load and teacher load, and I agree that it is well balanced. In fact, you are in a very fortunate balance in terms of the way you have organized your schools in this respect. I might say this: You are in better shape than most schools nationally.

Q. Let me ask you this: Is that not the end result of any

districting man? A. What?

Q. The balance of schools, the class and the teacher load? A. This is the desired end, but always in terms of other factors that are involved. You could get a balanced load by having someone up here in the northeast section, actually out in the county, come into a school at the other end of the community, if you are just talking about balanced load and leaving out other factors.

Q. Well, we haven't done that here. A. With your county transfers.

Q. The county will go anywhere we send them. A. I know.

Q. Now, let's switch over to the junior high school districts. We have three shown on this map, which is Exhibit 11, indicated by the red tape. They are almost in a line east and west. The district lines between Tigrett and Merry Junior High follow Riverside Drive, the railroad right

The Court: (Interposing) All right. Let him give his opinion on what is wrong with that they are proposing, and if he says that not having the feeder system is part of it, he can testify and we will consider the relevance at the proper time.

—267—

The Witness: I think the importance of any good educational practice in order to set up zoning lines would be, in effect, to some degree, indicative of gerrymandering as such or at least some reason has come in between sound educational practice or actual practice that is being carried out. You have here a section (indicating) which is very wide here and narrow down here in this section, and then widens out in this section, sort of an hour-glass shape type of thing, and it is kind of irregular. I don't know why it couldn't have been extended over here (indicating throughout). There must be some reason for not having done this.

The Court: Well, do you think that would be better to extend it over there in terms of load of schools?

The Witness: I think it would be better if you took a general line and drew it right between these three schools and you would have a general indication of what the division ought to be, because the schools are somewhat equal in capacity, and then

—268—

from that point, then you try to make the deviations which would balance the school system. When we showed the projecturals, if you remember, we showed where negro students reside and where white students reside, and then you can see where the lines

were drawn very consistently between negro and white population, and this is what the lines tend to follow, and I think that on the basis of logic, you would then contend that probably this had something to do with the way the lines had been established.

I think the lines need to be established on a little more objective and logical basis, objective and logical lines.

By Mr. Rice:

Q. Is your main objection to it the race problem?

Mr. Williams: I object to that, if Your Honor please. He hasn't stated any objection. He is testifying as an expert to the best of his ability, and I don't think he is required to answer counsel's questions as to whether he objects to anything.

—269—

The Court: He is testifying about this map and whether it is gerrymandered, and I think the import of Mr. Rice's question is—is your main reason for saying it is gerrymandered the race question.

Mr. Williams: I think he can ask that.

The Court: Well, that's what he meant obviously.

The Witness: Lines in general follow race residence pattern of the community. This is, I think, something that almost anyone who looked at that could state. I took a map of the community with negro and white populations. I projected it up on the wall, and I gave maps to twelve different principals, and I said, "If you were going to gerrymander this district so that negroes would have to attend

negro junior high schools and whites would attend white junior high schools, how would you draw the lines?"

Mr. Rice: I believe he has departed from the question.

—270—

Mr. Williams: No, sir. He is still explaining, and I think he is entitled to explain. Counsel has to take the bitter with the sweet.

The Court: Well, he is getting ready to testify about hearsay, Mr. Williams, and the question as we understand it, and that's what we are trying to get this case bound to—the School Board has proposed something, and we want something concrete from the plaintiffs' side as to what they say is wrong with it and why, and Mr. Rice is asking this witness what he thinks is wrong with it, and the Court wants to know, because we have to do something with this lawsuit. We can't go on forever, and we have some concrete notions about the elementary schools—as, for example, the concrete notion that the western end of Lincoln ought to be carved off and put into Alexander so all of Alexander would be on one side of the railroad, and we have concrete notion with the possibility of the southeast corner of West Jackson, and that's the kind of thing we are interested in. We are not getting very far along this junior high route on the same issues.

—271—

Mr. Williams: May it please the Court, this witness has already—if the Court is looking for con-

crete proposals, he has already concretely proposed how he thinks that it ought to be done.

The Court: Well, if he has, the Court hasn't picked it up, and that is what Mr. Rice, I believe, is asking him.

Mr. Williams: Well, I thought he had on direct examination. Maybe we had getter go over that again, Your Honor.

The Court: All right, sir. Go ahead.

Mr. Rice: I don't even remember the question. That is all.

The Court: All right, Mr. Williams.

Redirect Examination by Mr. Williams:

Q. Mr. Herman, so there may be no question in the Court's mind, I believe you did state on direct examination how you thought the junior high school zoning system might objectively be set up on a reasonable basis, didn't you?

—272—

A. Yes. I gave a tentative kind of organization which might be followed, and I assume that there would be changes in the elementary boundaries and, therefore, after those changes would be made, then you would adopt the feeder system, and I just suggested that as a matter of tentative planning Parkview, Washington-Douglas and Whitehall would go into Jackson. Highland Park, West Jackson and South Jackson into Tigrett, and Alexander and Lincoln into Merry.

Q. And that would put the three school zones on the western side of town in Tigrett, the two schools in the north-central side of town in Merry, and the three schools on the

southwest side of town in West Jackson, which is on the south side of town, is that correct? A. Yes, sir.

Q. Now, did you take into consideration school capacities in proposing that arrangement? A. Yes.

The Court: You say the three schools on the west side of town into Jackson?

Mr. Williams: Southwest, I am sorry, Jackson Junior. My directions are confused. The three

schools on the southeast side of town into Jackson Junior High.

The Court: Let's go over that one more time. What is it you are proposing?

The Witness: This is a tentative proposal. I think the school administration would have to make studies of this and would have to come up with some kind of, you know, enrollment projection and all. In general, I say Parkview and Washington-Douglas and White-Hall would be feed into Jackson. Highland Park, West Jackson and South Jackson into Tigrett and Alexander and Lincoln into Merry.

By Mr. Williams:

Q. Would that envision that the zone lines of those respective elementary schools which feed into the high schools, junior high schools, would be contiguous, would, in effect, encompass and constitute the zone lines of the respective junior high schools? A. Yes, sir.

The Court: You would put all of South Jackson, West Jackson and Highland Park into Tigrett?

The Witness: Yes, sir; assuming that those lines for those elementary school zones would be changed

—274—

somewhat.

The Court: Well, that would require a complete reorganization of the elementary lines, wouldn't it?

The Witness: This would be dependent upon the organization of the elementary lines; that is whatever occurs there would be a pattern for the junior high schools.

By Mr. Williams:

Q. Now, it may very well be that the Court is looking at the total enrollment for these three elementary schools, but the pupils are graduating from these elementary schools and entering junior high schools, that would not constitute the total enrollment that we have down here in the figures that have been furnished? A. You have said an awful lot, what is your exact question?

Q. What I am afraid is—the Court expressed some surprise that you would put those three schools, Highland Park, which has an enrollment of five sixty-two, and West Jackson, which has an enrollment of four hundred and nine, and South Jackson, which has a total enrollment of five forty-four, into the Tigrett Junior High School zone, but, in considering, in figuring the assignments which would

—275—

thereby be made to Tigrett Junior High School in light of school capacity, you figure the projection of the percentage of the total enrollment of these elementary schools which would be graduating and entering junior high school and not the total enrollment, do you not?

Mr. Rice: I believe Mr. Williams is doing the testifying, Your Honor.

The Court: I believe that is a leading question, Mr. Williams.

Mr. Williams: I guess it was, and not a very good leading question, either, I might say, Your Honor. But it is done now, and is the answer stricken from the record?

The Court: He didn't answer the question.

Mr. Williams: Well, maybe I ought to do it this way:

Q. Highland Park has an enrollment of five sixty-two and South Jackson has an enrollment of five forty-four and West Jackson has an enrollment of four hundred and nine. Now, that is roughly about fifteen hundred pupils. The figures that we were furnished show, I believe, Tigrett

—276—

Junior High School has a capacity of seven hundred and twenty-five. Now, is that, based on those school capacity figures, is your proposal that those three schools feed into Tigrett Junior High School reasonable? A. It would fit within reason, but I think there is one thing always that would have to be considered in addition. This should be the general principle which you follow. Then if you do get differences in enrollment that are drastically different where the administration would feel there should be some shift, there should be some shift, but usually on the edges of the boundaries, where you take into consideration again distance factors, for example.

Q. Now, just one or two more questions. Mr. Herman, do you have any control over the extension or the contraction of the school zone lines of School Zone 45? A. Yes, I do.

Q. In which you are now living? A. I do.

Q. Is there any way that you could extend those lines at present so as to encompass some additional negro students in your school districts so far as you are aware? A. No,

—277—

there is no way of doing that.

Q. Is this a school district, a local school district operated by the state or by a municipal system? A. It is operated by the state, but a local school district is a quasi municipal corporation and operates as such.

Q. Is this district located in a predominantly white community? A. Yes.

Q. Is it contiguous to other local school districts? A. Yes.

Q. So that in order to extend your school district lines you would have to negotiate some change in zone lines, in lines of other adjoining school districts? A. This is not negotiated. This is a matter of state law, and the procedures for doing this are referendum procedures. There actually is in process at the present time a program raised by citizens and ourselves calling for putting a number of our school systems together in consolidation movements, but that is a long-term problem with which we are not directly concerned today and are concerned more with five to ten years from now.

Q. You are dealing in every way that you can on a

—278—

sound educational basis and without racial discrimination with all negro children who are presently in your school system, is that correct? A. That is correct.

Q. And at such time in the future as you do acquire a larger number of negro students, do you intend—how long do you expect to take before you desegregate those chil-

dren? A. They will be desegregated the moment they move into the community. There will be no such practice operating. If they move into a school area, or school zone, they will attend that zone unless there is something unusual, and in that case the children would not be changed individually, but would be changed selectively. Whenever we have a real probem of this type, we usually take a whole class room as it is already constituted and move it into another building, or we may shift the boundaries of a school area right on the edges.

Q. Why is it sound educational practice to require children to attend the school to which they are assigned? A. First of all, there is a neighborhood identity which these children have. They have identification with children in

the neighborhood and with the community, and in communities the school is the main focal of interest and is the center of people's operations. The school is used for virtually every purpose that the community can use it for, for recreational purposes, for holding community meetings, and even other groups which are not community oriented. The school is the center of operation, and the children need to have some identification with whatever that localized community is.

Mr. Williams: That is all.

Mr. Rice: No further questions.

The Court: You say up in your school district, No. 45, you are anticipating substantial number of negroes will move in within the next five years, and you are making special plans with respect to your schools. What special plans would be necessary?

The Witness: Well, we have worked with the local Human Relations Council to make sure there would be—we would support the idea, for example, by policy of Board, that there will be no segregation in relation to housing in the community.

The Court: That has nothing to do with schools.

—280—

What particular plans do you, as an educator, have to make to anticipate the influx of your new negro citizens in the community?

The Witness: One of the things we are doing is planning on employing negro school teachers. At present we do not have any, and the Board and ourselves are fully aware of the fact that this exists, and we are presently planning to hire a number of negro school teachers over the next five years, even though we do not have a negro population. This, in essence, will be one part of the preparation for this. We have adopted the use of ethnic materials in the school curriculum.

The Court: What would that be?

The Witness: These are maerials—well, we had what has been branded in quotation marks as lilly white school materials. There has not only been the race element that has been involved, but the element of social class has been involved. All of our reading materials, for example, the usual thing you read about in the newspapers and periodicals where we

—281—

have Dick and Jane, nice little clean white and negro children, and we don't show negroes in our material, and we are now making an effort to bring in a great deal of material in which children from all races are

included, not only in the pictures, but in the content and the actual program of the school, program of study in the school. We have had our Board of Education reading on problems in relation to segregation and problems which would emerge in a school system, and we are trying to plan ahead of time for any kind of crisis which we might have, and we could very well—in fact, we could have more of a problem than Jackson would have in this respect, because negroes in the community are, in some cases, almost a frightening thing to some people, and we have to plan for this as well. The School District, when this occurs, will take into consideration the education of the community as well. As yet, we have not set up a plan.

—282—

The Court: In other words, you are doing some missionary work right now?

The Witness: Yes, sir. Because we know the problem will be with us too. In our zoning there will be no consideration whatsoever of race, because the zone lines are fairly well established and will remain that way, except for distances in enrollment.

The Court: So far as zone lines are concerned, you wouldn't have any problem, because your negroes would not live in any particular section, would they?

The Witness: No, they would not. They would be over the entire community.

The Court: Anything further?

Mr. Williams: One thing omitted, Your Honor. Mr. Herman has a plane leaving at one something, and I would like, if the Court permits and counsel has no objection, I would like to introduce this evi-

dence regarding the payments which have been made for his expenses.

The Court: Any objection, Mr. Rice?

—283—

Mr. Rice: Go ahead.

By Mr. Williams:

Q. Does that statement correctly reflect the payments which have been made to you, or to Dr. Bardwell for the two of you for expenses, traveling expenses and expenses

of materials in connection with the preparation of the exhibits which have been presented here? A. The expenses where my name is involved are correct. I don't know firsthand about the others. I think they would be essentially correct, because Dr. Bardwell had the credit card on the airplane, and he received the payment for those.

Q. Did you travel with him on each occasion that he came down? A. Yes, except this time. I have the last two times that I have made trips, and this time a total of about, I should say, a hundred and thirty-five or a hundred and forty dollars expenses, which have not been submitted.

Q. In addition to those listed on there? A. Yes.

Mr. Williams: I would like to introduce that as an exhibit.

The Court: So admitted.

—284—

(The document above referred to was marked Exhibit 23 to the testimony of the witness, and same will be found among the exhibits hereto.)

By Mr. Williams:

Q. Now, is that the original copy of a letter which you addressed to me dated the 15th of June, 1965, billing me for your services in this case? A. Yes, that is.

Mr. Williams: Will you let that be introduced as an exhibit to your testimony?

The Witness: All right.

(The document above referred to was marked Exhibit 24 to the testimony of the witness, and same will be found among the exhibits hereto.)

Mr. Williams: Now, if Your Honor please, upon receiving that bill from him, since Dr. Bardwell wasn't coming today, I called Dr. Bardwell yesterday, and he sent me this telegram about which this witness knows nothing, but if counsel has no objection, I would like to introduce this telegram as the next

exhibit.

The Court: All right.

Mr. Williams: A telegram received by me from Dr. Bardwell.

Mr. Rice: I don't have any objection to it being introduced for whatever it is worth. I don't think it is material.

Mr. Williams: I understand he is going to contend that this should not be allowed.

The Court: He is not objecting to the hearsay element in it, as we understand.

Mr. Rice: No, sir, I am not objecting to that.

The Court: All right. Mark it and admit it in evidence.

(The document above referred to was marked Exhibit 25, and same will be found among the exhibits hereto.)

Mr. Williams: I believe that is all.

Mr. Rice: I would like to talk to this gentleman about his fees.

—286—

Recross Examination by Mr. Rice:

Q. Now, Mr. Herman, the fees which you have listed here. I don't question any of that. I just simply want to know by whom you were paid. A. I haven't been paid any fees. I have merely submitted the bill to Mr. Williams.

Q. This has not been paid? A. No.

Q. Have you been paid for your travel? A. Mr. Williams has paid those.

Q. With a personal check? A. With a check directly from him, yes.

Q. Now, do you know from where he got his money? A. No, I don't.

Q. Do you not understand that you are employed by the National Association for the Advancement of Colored People? A. I don't know whether I am or not, to tell you the truth. I know Mr. Williams is associated with the NAACP, but I don't know where the money came from at all.

Q. And Dr. Bardwell testified, I believe you heard him, that he had been contacted by the Legal Aid Group of the NAACP. A. Yes.

—287—

Q. And he, in turn, contacted you? A. He contacted me, not in reference to taking part in this, but he understood I was coming by plane and made arrangements to meet me.

Q. But, the initial contact with you came from Dr. Bardwell about coming down here? A. No—on the basis of he was coming, and he heard that I was coming.

Q. You were coming together, that's what I mean. A. Yes.

Q. You don't know where these funds came from, or whether they were paid by Mr. Williams out of his personal account or relayed by him out of some other account? A. They were not a personal account. In the signature on the check there was an additional element underneath, and to tell you the truth, I didn't read it. In fact, he is not too good a handwriter, if he doesn't mind my saying so.

Q. Some type of special account? A. I suppose so.

Mr. Rice: Thank you.

—288—

Mr. Williams: I neglected to ask you this: Will you look at that first exhibit, if you have it there, and tell us how many trips you have made and where, in connection with this matter, and the time you spent?

The Court: Do we have any issue as to the reasonableness of the amount charged by the witness? We know you are not conceding, Mr. Rice.

Mr. Rice: No question about the reasonableness.

The Court: Does that finish with this witness?

Mr. Williams: Yes, sir.

The Court: All right, Mr. Herman, you may step down, and you are excused.

(Witness excused.)

The Court: We will have a recess. Gentlemen, be back in about fifteen minutes.

(Recess.)

* * * * *

—291—

The trial of the case was resumed after recess on the morning of this date; Friday, June 18th, 1965, at 11:15 a. m., when and where evidence was introduced and proceedings had as follows:

The Court: Mr. Williams, put on your next witness.

Mr. Williams: May it please the Court, that concludes the plaintiffs' proof on the issue of gerrymandering.

The Court: Do we have any additional proof from the defendants on that issue?

Mr. Rice: No, sir.

The Court: What about the question of acceleration of desegregation? As I understand, it is the contention of the plaintiffs that beginning with the coming school year, 1965-66, that all remaining grades should be integrated. As I understand it, on the plan that was heretofore approved in September, it would be the seventh and eighth grades, right, and then the following year would be the ninth and tenth, and the next year would be the eleventh and twelfth? Do

—292—

you gentlemen have any further proof on that issue?

Mr. Rice: No, sir. We rely on the rather extensive hearing we had on that question.

The Court: You mean the pre-trial conference primarily?

Mr. Rice: Well, we rely upon the initial hearing in the matter, in which we submitted the factors that we feel are prepared, and we will only say this to the Court—that the testimony in that hearing was

that we are now reaching that point, and about the only thing we rely on is the initial testimony.

The Court: You have no further proof on that issue?

Mr. Rice: I don't know how we could improve on it.

Mr. Williams: May it please the Court, we submit the burden is on them.

The Court: We will take all this up in argument. Do you have any further proof directly aimed at that issue?

—293—

Mr. Williams: Yes, sir, if Your Honor please, I issued a subpoena. It was issued rather late, I will admit, for Mr. Huckaba to appear today and bring with him—

The Court: Do you want to put him on the stand?

Mr. Williams: I would like to receive that information, at least that was requested in the subpoena, if he has been able to get it up.

Mr. Rice: The subpoena was three-pointed. We are able to supply point one. The other two we don't have, haven't been able to dig out, and I believe this is what you asked for in point one. (Mr. Rice hands document to Mr. Williams.)

Mr. Williams: Is this a single copy, or more than one copy that has just been handed to me?

Mr. Rice: I don't know. We may have more than one copy.

Mr. Williams: I believe it is just a single copy. If the Court please, I would like to ask that this be introduced as an exhibit on this question.

—294—

The Court: What is it in general?

Colloquy

Mr. Williams: It is the figures from the Superintendent showing the total enrollment, negro and white, at each respective school in the school system for the school years 1963, 1964 and 1965.

You didn't furnish it for '63 and '64.

Mr. Rice: No. We don't have that. I might point out that it only called for '64-'65.

Mr. Williams: I am sorry.

We would also like to have information as to the negro and white teachers employed. I don't believe that is a factor since the defendants admit that all-negro teachers are assigned to all-negro schools and all-white to all-white schools.

Mr. Rice: Well, we have white teachers assigned to the integrated schools.

Mr. Williams: Now, the last thing we asked for was figures by the Superintendent as to the approximate number of negro and white students who would be registered in each school if the school system were desegregated in its entirety in September, 1965.

—295—

Since they have not furnished that information, I take it that defendants are saying that they do not have that information and have not considered it. If so, then it will not be necessary for me to put Mr. Huckaba on for any purpose at this time.

The Court: All right, sir.

Mr. Rice: His assumption that we don't have it is correct. The rest of his assumption, we are not sure about.

Mr. Williams: Well, I don't see how they could consider it, if they don't have it.

Mr. Rice: Well, I agree we haven't got that and haven't considered it.

Mr. Williams: Well, we would like to mark that as an exhibit.

The Court: All right, mark it and submit it in evidence.

(The document above referred to was marked Exhibit 26, and same will be found among the exhibits hereto.)

—296—

The Court: Now, what other proof do you have on any other issue, Mr. Williams?

Mr. Williams: May it please the Court, we have Dr. Weinstein, who will testify on the issue of acceleration and faculty desegregation. But, by going forward, we do not wish to be understood as waiving the burden of proof that we submit that the defendants have on these questions.

The Court: You say the defendants have the burden of proof not only with respect to the acceleration issue, but also with respect to faculty desegregation.

Mr. Williams: Yes. If the Court please, this, as being a part of the rights which the students have, the plaintiff school children have as we contend it should. Then the burden is still encumbered on the defendants to justify the delay in accordance with that right.

The Court: All right. We understand your position. Now, Dr. Weinstein is going to testify next?

Mr. Williams: Yes, sir.

—297—

Mr. Rice: If the Court please, I understand the position of the plaintiffs is that it is our obligation to go forward with the proof in this matter?

Mr. Williams: Yes.

Mr. Rice: We move for a judgment on the pleadings, Your Honor, and I object to any further testimony.

The Court: Well, we haven't made up our mind about where the burden of proof is on this faculty desegregation proposition. We understand Mr. Williams' position, which is that as a procedural matter, these plaintiffs have a right to seek faculty desegregation as part of their right to a desegregated education, and since, generally speaking, the burden of proof is on the School Board with respect to gradual desegregation and that type of thing, he is saying that that principle of the burden of proof goes over to the question of faculty desegregation. That's your position?

Mr. Williams: Yes, sir.

—298—

The Court: So he is contending that the burden of proof is on the School Board to show that it is not necessary to integrate the faculties in order to abolish educational desegregation, educational dissemination. In any event, do you have any proof aimed at that particular issue that you haven't put on?

Mr. Rice: No, sir.

The Court: Well, you go right ahead, Mr. Williams.

Mr. Williams: May it please the Court, I might state in passing that I cite as authority for that position an analogous situation on the question of zoning in the Northcross case where it was said that the

Board has the burden of showing that it was non-racial.

The Court: All right.

Mr. Williams: Call Dr. Weinstein.

—299—

DR. EUGENE WEINSTEIN, the said witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Williams:

Q. State your name, age and address. A. Eugene Weinstein, age thirty-four, 6617 Elmwood Court, Nashville, Tennessee.

Q. What is your occupation? A. I am a sociologist. I am employed by Vanderbilt University.

Q. Is that in Nashville, Tennessee? A. That is in Nashville, Tennessee.

Q. How long have you been so employed? A. Since 1958.

Q. Will you state, if you please, your educational and professional background? A. I received my BA from the University of Chicago in 1950; my MA from Indiana in 1951; my Ph.D. from Northwestern University in 1954. Since that time, I have been engaged in research and teaching in the areas of sociology and particularly within the

—300—

areas of sociology and child development. I have been the author of a number of articles in professional journals, two books in the area of child development. I have sat on the editorial board of two professional journals, one in child development and one in social psychology.

Q. Do you have membership in any professional soci-

eties? A. Yes; the American Sociological Association, the Society for Research in Child Development.

Q. Are you presently, in addition to your teaching duties, engaged in research, looking towards learned publications? A. Yes.

Q. Have you been especially interested in the area of child development? A. Yes, sir. This has been a major research and teaching interest of mine.

Q. Have you also interested yourself from time to time in the past in studies related to school desegregation and the development and educational attitudes of negro children and their parents? A. Yes, I have. I have conducted several studies. Students under my supervision have done

doctoral dissertations in this area. At present I am serving as a consultant to a major nationwide study commissioned by Congress as part of the Civil Rights Act in conjunction with the Office of Education.

Q. In particular, did you do any early studies in the City of—well, did you do an early study in the City of Nashville relating to the attitudes of negro parents in school desegregation? A. Yes, I did.

Q. Did you do any other studies in Tennessee? A. Yes. I did another study in another major city in Tennessee.

Q. Doctor, do you feel, then, that you are able to give an expert opinion regarding the effect of faculty desegregation on the desegregation of school children in a school system? A. Yes.

Q. Will you state what that opinion is? A. If I might qualify first, at this time there is not a large body of specific studies that are directed at scientific proof of the direct impact of faculty desegregation, so I will be testifying principally on the basis of my experience in doing research and

—302—

the available literature, and then general principles of child development and social psychology with respect to this particular point.

Generally speaking, then, faculty desegregation would have the—or the absence of faculty desegregation would tend to have the following, would be likely to have the following effect: First, especially in conjunction with a transfer plan, it tends to continue to stigmatize negro schools or schools that were formerly negro schools as negro, and to make schools which were newly desegregated still be regarded as white schools as part of the generalized conception of the schools themselves. As such, it tends to impede the ordinary rate of desegregation in that community.

It would be likely to do this.

There is a second potential impact of faculty segregation with respect to negro students. It deprives them of the opportunity of having experience with white middle class values, with white people in a presumably supportive relationship to them in the educational system. It tends to remove from them the opportunity to have experience with another sub-culture that they have to cope with later in

—303—

life, whose values and attitudes will be very important in the place they make for themselves in subsequent life.

The Court: Are you talking now about the effect of negro children going to a school with an all-white faculty, or are you talking now about the effect of their not going to the school, about their refusal to go to the school because it has an all-white faculty?

The Witness: I am talking about negro students going to a school because of residential factors which

has an all-negro faculty, in which they find themselves in the same culture with people who tend to share the same culture and in which they don't have the experience in the, quote, negro school.

The Court: What you are talking about is the effect of negro children living in a negro neighborhood going to an all-negro school, including the faculty?

The Witness: That's correct, sir.

By Mr. Williams:

Q. Will you continue, please, or had you completed your

—304—

answer regarding faculty desegregation? A. No. There is one other point I think that can be made in this area, and that is the impact on white children of the absence of faculty desegregation. What it does is essentially deprive white children of the opportunity to have experience with negroes in a professional and authoritative role. The existence of a non-desegregated faculty, the existence of an all-white faculty tends to be confirming, likely to be confirming of existing impressions in stereotypes that the white students have, so that this would be another very likely impact of the absence of faculty desegregation.

Q. Based on these principles that you have discussed, would it be your opinion that in order to provide a completely desegregated education for school children, that faculties should be desegregated as well as school buildings? A. Yes. Particularly, if you put the question desegregated education, certainly what students learn in contact from and with teachers as models for them, I would certainly state that it is necessary to have faculty desegregation as well as student desegregation.

—305—

Q. Are you familiar with the guidelines that the Commissioner of Education has published? I don't believe I have but one copy of this.

Mr. Rice: Well, I desire to object to this as being immaterial. We are dealing here with a constitutional question and not an administrative decision.

Mr. Williams: If the Court please, my argument will be, and it is in the trial memorandum which I have filed with the Court, that it is absolutely true that the Commissioner of Education cannot determine for this Court what the Constitution requires. However, the determination, the administrative determination of the highest public education official in the United States regarding what constitutes desegregation in his application of an Act of Congress involving similar rights can certainly be regarded as persuasive.

The Court: Would it be any more from the point of view of Rules of Evidence in the text books written by a very eminent person?

Mr. Williams: No, sir, I wouldn't say it would be any more conclusive.

—306—

The Court: You can't, as a matter of Rules of Evidence, and I suppose we still follow the Rules of Evidence even in this type of case, you cannot introduce a text book on a subject, because it is hearsay testimony and not subject to cross-examination. You can use a text book to cross-examine a witness, to test his knowledge, and a witness can base his opinions on text books he has read, because all opinion evi-

dence necessarily has that element of hearsay, but we know of no rule where you can simply introduce in evidence the opinion of someone else on direct examination of a witness as part of your case in chief, and we can't quite see how analytically what the United States Commissioner of Education has said would be any different in that respect.

Mr. Williams: Well, if the Court please, I think it probably—now that Your Honor mentions it—I think an administrative regulation by a public official of the United States is certainly entitled to a little more considertaion in this Court than a text book.

—307—

The Court: Well, if we were determining a question under the Civil Rights Act, you would certainly be correct because an administrative determination pursuant to an Act of Congress is very strong authority, very strong presumption of its correctness, but what we are doing here, as we understand it, under the suit that is pending, is to litigate constitutional rights, and it would be our idea that what the Commissioner of Education says about a proper interpretation of the Civil Rights Act would not be admissible.

Incidentally, I have a copy of that document you have. It has been generally distributed around.

Mr. Williams: The Court, if the Court please, has in these cases always and invariably, and I suppose I have just gotten into an unloyal-like attitude by reason of the wide discretion practically all of the judges, including Your Honor, I must respectfully submit, have exercised in permitting Boards of Edu-

cation to introduce all kinds of hearsay evidence into the record, practically anything that has any relation to the subject.

—308—

The Court: Well, we have tried to follow the Rules of Evidence, Mr. Williams. Now, it is certainly true that in situations things have come in which did not meet the Rules of Evidence, because there was no objection to them. You and Mr. Rice have actually sort of horse-traded a little bit sometimes, and he wouldn't object to yours and you wouldn't object to his, and it came in. But when you have an objection on a question of evidence, then the only thing the Court can do is apply the law as best he can, and Mr. Rice has objected to this particular document, and we have thought out loud about it and analyzed the problem, and we think we are right about it, and so we sustain the objection.

Mr. Williams: Very well, Your Honor.

By Mr. Williams:

Q. Now, Dr. Weinstein, I forgot to mention this in connection with your qualifications: Are you also familiar with the literature, with research and the publications in general that have been done regarding and reflecting on the pace of desegregation in school systems? A. Well, I have been en-

—309—

gaged in some, and some of my research has some bearing on this particular issue. Two studies in particular have some inferential bearing on this issue.

Q. Do you have any opinion regarding the impact then of delay in desegregation on school children?

Mr. Rice: May it please the Court, I think that this is hearsay. His qualifications on that subject are sketchy, and I really believe that it is the Court's opinion and not this witness' opinion that will determine that matter.

The Court: Well, of course, you are right, Mr. Rice, that the Court has to make the ultimate decision about the issue, but we think that the witness is qualified to give an opinion as to the effect of the delay of desegregation. He has testified that he has made some studies of that. The objection is overruled. Go ahead.

By Mr. Williams:

Q. Will you proceed? A. Well, principally, what happens with segregated education is that negro students start

—310—

out somewhat below white students in first grade, in achievement level, and a whole host of what you may think of as educational output variables, and for each succeeding year the discrepancy widens.

Q. Is that in segregated systems? A. In a segregated system the gap continues to widen with each succeeding year in the system, or in the system that I studied personally.

Q. You say the gap widens. Who is ahead and who is behind? A. The white students get further ahead. Actually, what happens is mainly the negro students fall further behind.

The second set of studies—now, I didn't conduct these—that have bearing on this, the studies reflecting the achievement test results after desegregation of formerly segregated school systems, and here we find evidence that indi-

cates that some of this gap is ameliorated, is reduced subsequent to desegregation of educational systems. Now, taking these two pieces of evidence together, the inference I draw here—I am basing my opinion on acceleration—is that as far as the negro student is concerned, the faster, the

—311—

better; that is every year a negro student—for every year that he is delayed, this is evidence that he is likely to drop further behind. For those students who never catch up with the system, they will drop further behind. So this is the principal basis on which I draw this inference.

Q. Now, is there any evidence—is there evidence that under the desegregated system that there is any significant retrogression or falling behind on the part of the white student? A. No, there is not; none that I know of. I think that the study that I am currently associated with should provide once and for all the most firm and definitive answers to these questions. A year from now I could be more expert even than I am now. However, what we have now indicates fairly clearly what I have been saying.

Q. Based on those opinions and the studies, in your opinion is it important that the Jackson City School System accelerate its pace of desegregation? A. I have addressed my comments to the general principle of what happens as a consequence of continued or slow desegregation. These would apply to the best of my knowledge to any situation.

—312—

Q. You have heard about the Jackson plan that has been discussed here with regard to the pace of desegregation? A. Yes.

Q. Now, will you relate those principles that I have stated to the question that we have raised here regarding

acceleration of the Jackson plan, which now has three years to go before completion of desegregation?

The Court: Not three years, but three steps.
Mr. Williams: Three steps and two years.
The Court: About two years and three months.
Mr. Williams: Yes, sir.
The Witness: I don't know the exact numbers that would be affected in terms of the negro students, but it would be two and a half years of decreased education or less educational opportunity and likely further falling behind.

By Mr. Williams:

Q. For the negro students? A. For the negro students of Jackson, Tennessee.

—313—

Q. Assuming that the negro students constitute approximately forty percent of the school population of the City of Jackson, would you assume that this would be a substantial educational loss to negro school children in the City of Jackson? A. Yes. But, not only based on the forty percent—it is apt to affect, because of the pattern of zoning, a somewhat smaller number than forty percent, but it would still affect substantial numbers. If it affects ten or fifteen children, it is still a loss.

Q. Now, on the question of faculty desegregation, you mentioned just a sort of an aside in connection with the stigmatizing of schools, the matter of free transfers, would you state, if you please, your opinion with regard to whether or not allowance of free transfers has any impact on either of these questions?

Mr. Rice: I object to that as being outside the scope of this inquiry at this time.

The Court: We didn't quite understand the question.

Mr. Williams: I asked his opinion on whether or not the allowance of transfers has any impact, any

—314—

significant impact on either of these questions, that is faculty desegregation or acceleration. We are talking about these two issues that we have before us now, if Your Honor please, but I am trying to bring out—you mentioned the impact of transfers at least in connection with his conclusions regarding faculty desegregation, and I wanted him to explain that.

The Court: Well, the Court has indicated a tentative ruling about the business of transfers and how it has to be operated, if it is going to be constitutional. But, as we understand, you are asking this question for another purpose. It is tied in with this question of faculty desegregation.

Mr. Williams: Yes, sir.

The Court: And we are not quite sure how it would be, but maybe the witness will explain that; so I will overrule the objection.

The Witness: What I meant there essentially was that when you have a pattern of faculty segregation

—315—

coupled with a transfer provision of the kind involved in this particular instance and what has been the present experience is the continuation of negro schools identified as negro schools, and the continuation of the other schools tending to be identified as white schools, although partially desegregated. So

that what this does—faculty segregation tends to make additional impetus to transfer out of a negro school, because it is obvious that it is negro in all of its educational environs and it tends to stigmatize a school as a negro school.

By Mr. Williams:

Q. Does it also have any effect in regard to the negro child, who might otherwise attend, exercise a free choice or zoning rights to attend a white school? A. I am not as sure on that point, Mr. Williams. The experience from my research has indicated that negroes who are interested in desegregated education for their children have wanted their children to have experience with white teachers, have specifically stated that this was one of the reasons that they

—316—

were interested in desegregation. They wanted this kind of experience for their children.

Q. Is there anything in your studies to indicate that these parents did not want their children to have a broad ethnic exposure with regard to faculty? A. No. But they did want their children to have experience with some white teachers.

Q. Dr. Weinstein, you, too, I believe, have incurred travel expense in coming down here, have you not? A. That's correct.

Q. This is your second day? A. Yes.

Q. I don't believe I have paid you anything? A. Not yet, sir.

Q. What is the amount of that travel expense? A. About $68.00.

Q. For both days, or just the one day? A. For both days.

Q. And I believe that when I had my secretary to call you and ask you if you would testify for us—did she mention to you that we would expect to receive a bill from

—317—

you? A. She indicated to me that that would be involved.

Q. And what would be the amount of that fee? A. A hundred dollars is generally the amount.

Mr. Williams: That is all.

Cross-Examination by Mr. Rice:

Q. Dr. Weinstein, have you ever personally talked with any of the plaintiffs in this lawsuit? A. I have not.

Q. Have you personally talked with any parent or child in the City of Jackson in regard to the school system? A. I have not.

Q. So that we will at least be talking about the same thing, what is your, and I am sure the accepted definition of sociology? A. It is the scientific study of human society.

Q. Well, when you combine it to make it social psychology, what do you mean by that? A. Sociology is concerned primarily with how groups are organized with social structure. You might think of sociology as the study of the forest as contrasted with social psychology, which is concerned with the location of the individual, with rela-

—318—

tionship of the individual as an individual in society, to his developments, to his personality, and how this is related to and conditioned by society.

Q. You say scientific study. Now, just what do you mean by scientific study in regard to the study of humanity? A.

With regard to the study of human behavior. Well, we don't wear white laboratory jackets or that sort of thing, but we attempt to get quantitative, objective evidence to test hypotheses under conditions in which the answers could either verify or disconfirm what one's present functions were. In other words, we attempt to use the scientific method which means observations, measurement and verification based on empirical evidence. We go out and look, go out and observe.

Q. That is exactly what I wanted. You just go and look, don't you? A. Yes.

Q. And at the very best, sociology and social psychology is a nebulous sort of thing, isn't it? A. Relatively speaking, yes.

Q. Now, in regard to the studies relating to school segregation, have you made those yourself? A. Two of them —the actual data collection was done by a doctoral student of mine. Well, in both I didn't actually collect the data. In one case the data was collected in the school system itself, and in the other case, it was collected by hired interviewers, but I supervised, designed and conducted the analysis of these studies.

—319—

Q. What kind of questions would you ask on a school segregation study? A. It depends upon what the particular area or issue was involved. In one study there were achievement tests given, IQ tests given. There were questions like, "Do you want to go on to college? Are you planning to go? What job would you like to have when you get older?", trying to tap such things as educational, occupational aspirations—"What groups do you belong to?", trying to tap areas of social participation. It depends on what the specific purpose of a study is.

Q. What was the specific purpose of these studies upon which you are relying here? A. There are two. One study had as its purpose the factors which entered into negro

—320—

parents' decisions regarding desegregation of their children. The second study was a study which was attempted to compare negro and white elementary and junior high and high school students in terms of what we were calling social readiness for desegregation and for mobility in society actually. We were trying to get a base point to determine what were the gaps, what were the areas of social competence or gaps in social competence, things like aspirations, plans, the capacity to plan, conceptions about the future, the ability to take the future into account.

Q. Well, if I understood you correctly, in language that I can handle a little bit better, one study had to do with the reasons that negro parents desired to have their children attend a desegregated or achieve a desegregated education? A. That's right; and reported also on the experiences of negro parents who had sent their children to desegregated schools.

Q. And, second, you more or less compared negro and white students, putting it succinctly? A. That's right.

Q. Now, with regard to the second one, did you find a

—321—

difference? A. Yes. I pointed out to Mr. Williams before —yes, there are differences and the differences increase with time.

Q. The differences in social background, social achievement and educational achievement, as shown by achievement tests, is that not true? A. That's right. We try to make social background studies to see whether the differences continued.

Q. But you agree, however, that there are those differences present? A. Between negro and white students?

Q. Yes. A. Oh, yes.

Q. Now, I will ask you, Dr. Weinstein— A. (Interrupting) I should clarify. I am sorry to interrupt—that this study was done in a segregated system.

Q. I am glad it was. Now, if you take those two masses and mix them into an integrated school and classes on an even level, if you have a fourth-grade colored and fourth-grade white, and you bring them all into the same common

—322—

grade, I will ask you if it is not true that the resulting mixture of the two different levels of educational achievement into one group, is it not a reasonable statement that that causes myriad administrative problems to the educational system? A. I can only report on what I know of the experiences of school systems who have had top to bottom desegregation. Actually, I hesitate, even, to do that, because what you are asking me is to comment as an expert on educational administration, and I am not an expert on this.

Q. Then you are not competent to say to the Court whether the faculty segregation or the acceleration was related to administrative problems at all? A. No. My testimony was not related to administrative problems, but to the impact on the child.

Q. All right. Thank you, sir. Now, we will move to something else.

Have you testified in this type case before, Dr. Weinstein? A. Yes, I have.

Q. Where? A. In Federal Court in Nashville, Tennes-

—323—

see, on two occasions, one with respect to the desegregation

of the Davidson County Schools and once in relation to the desegregation of Wilson County Schools and also in Chattanooga.

Q. Now, in this case, and in those cases, by whom were you employed? A. Mr. Williams.

Q. And by whom were you paid? A. Mr. Williams. In the Chattanooga case and Nashville cases I was not paid.

Q. The time that you were paid, were you paid by personal check of Mr. Williams? A. I don't recall. I believe so. It was from Mr. Williams' office, but I don't recall.

Mr. Williams: Of course, that's immaterial, if Your Honor please. I haven't objected, because I don't care, but I object now. It is irrelevant.

The Court: Well, it might be. We will overrule your objection at this time.

By Mr. Rice:

Q. Do you have any contract with any of these plaintiffs to pay you for your services? A. Contract with any of the plaintiffs?

—324—

Q. Yes. A. No, sir.

Q. Have you had any agreement or dealings at all with the plaintiffs themselves? A. The plaintiffs per se, no, sir.

Q. Now, Dr. Weinstein, in regard to the transfers about which you spoke, do you advocate a no transfer plan? A. I don't advocate any plan, sir. I pointed out simply what appears to be the consequences of this kind of transfer plan.

Q. Well, any transfer plan that permitted transfers would do the same thing, wouldn't it? A. Pardon?

Q. Any transfer plan that allowed a student to transfer back and forth would do the same thing, wouldn't it, have the same effect upon a student? A. As far as the school system is concerned, as far as the racial composition of schools.

Q. I took it that you were testifying from the standpoint of the child alone, were you not? A. That's correct.

Q. And you were not concerned with the school system.

—325—

You were testifying from the point of view of the child alone, is that not true? A. The child and the kind of school environment that the child finds himself in.

Q. So any transfer plan at all that would allow a student to move from one school to another would defeat that portion of your requirement for an education, would it not? A. I don't see how that follows, Mr. Rice.

Q. Well, is it your belief, then, that a child should remain in the school of the district in which he lives, regardless, in order to give that child the best education? A. No, sir, not necessarily.

Q. Now, the presence of a white faculty, for example, in the formerly white schools in Jackson, that alone would have no effect whatever upon the attainment of a desegregated education of the negro children, would it? A. The presence of an all-white faculty?

Q. Yes. A. Yes, it would.

Q. How would that interfere with their attainment of a desegregated education? A. They don't have access to negro teachers as well in the school.

—326—

Q. Is that the basis on which you have based your testimony, that it affects a child adversely, the fact that he

would not be taught partially by negro teachers? A. No, sir.

Q. How does the presence of an all-white faculty in a school deter a negro child from attaining a desegregated education? That's my question to you. A. He is going to a school that is partially, in one respect, segregated.

Q. Is it your interpretation, then, that for schools to be desegregated, that everything in it must be desegregated? Is that your thinking? A. I am searching my mind for exceptions to the word "everything". That covers a lot of material. But, with a reasonable interpretation of "everything", Mr. Rice, yes.

Q. Now, the attainment of association with a culture which you say exists in other schools, would a negro child in a white school not attain that by virtue of being associated with the white and negro children in there with him?

A. Yes, he would, to some degree, certainly.

Q. And if a white child chose to attend a negro school, the presence of the negro student body, would that not associate that child with the opposing culture that you refer to, if there is a difference in that school? A. Certainly. But I guess what accounts for my apparent confusion is both are apt to notice and wonder why it is that only white teachers are allowed to teach the white students, and it's this kind of potential impact that forms a substantial basis for my testimony.

Q. The fact that he would see a white child—I mean see a white teacher, and wonder why there is not a negro teacher there? A. In the whole school.

Mr. Rice: That is all.

Mr. Williams: That is all.

The Court: The Court has a couple of questions to ask you.

Did you testify, Dr. Weinstein, that so far as you know in your own experience, that negro children do not, are not deterred from going to a heretofore white school because it has a white faculty? In other

—328—

words, I know it is your opinion that it would be better from an educational or sociological point of view if these heretofore white schools had negroes on the faculty. I think you say it would be better for both the white children who have always gone there and the negro children who come in. But the more precise question that the Court is trying to ask you and we think you may have answered it on direct examination is this: In your experience, do you find the negro child and parents facing a decision in going into a theretofore white school—is he to any extent deterred from going to that school theretofore white by the fact that the faculty is all white?

The Witness: As with any attitude or opinion, there is going to be variation on this. In one piece of research that I did, some parents commented on that as a problem. Some were not deterred, but actually saw the access to white faculty as a value, although the issue of all-white was not the issue that

—329—

the study was addressed to.

The Court: Do you know of any instance where a negro child or negro parent has decided not to send his child to a school because it had an all-white faculty?

The Witness: Yes, sir.

The Court: In Nashville?

The Witness: Yes. Some of the families in one study had decided to send their children to the desegregated school, and of those who did not, a number cited this as one of the reasons.

The Court: That they didn't have negroes on the faculty?

The Witness: Well, they were afraid that the white teachers would be too hard on the children.

The Court: You mean would be impartially hard on them or in doing their regular teaching they would be too hard?

The Witness: I can't completely interpret the response that I get from a survey. I am not sure what

they had in their minds, but this was raised as an issue, an issue that parents gave for not sending their children to white schools, they wouldn't have any negro teachers, and they were afraid the white teachers would be harder on them.

The Court: As far as you know, they didn't do it because they thought the white teachers would single them out and make it uncomfortable for them by being hard on them?

The Witness: As far as I know.

The Court: Let me ask you this: Back in the first round on this litigation, the City of Jackson School Board introduced proof in support of its contention that it was entitled to a gradual desegregation plan, and the plan that they offered, I believe, was the first three grades, the first three and the second three

grades the next year, and then a grade a year after that. The plan the Court approved was the first three grades the first year and the next three grades the

—331—

second year and then two grades a year after that. So we are down here to the point at the beginning of the school year '65 and '66 where under the plan approved by the Court, they would desegregate the seventh and eighth this fall and then the ninth and tenth a little more than a year from now and the eleventh and twelfth a little more than two years from now. Mr. Williams is seeking to persuade the Court to amend the plan and order desegregation of all the remaining grades this coming fall. That's the position of the plaintiffs.

Now, as I say, when we held the initial round of hearings in connection with this case, the School Board introduced proof which essentially in one respect was more favorable to the negroes than what you have just said. The School Board's proof was that at the inception that their accomplishment level was not noticeably different from the white children, but as they progressed through school, this gap between the white children in the white schools on the one hand and the negro children from the negro

—332—

schools on the other—the white children getting out into front and, as I say, that tendency accentuates as we go along, and so the School Board made the point that in support of its contention for this gradual desegregation, the School Board made the point that if you take a negro child who is already in the

sixth or seventh grade, and that gap has already developed, and put him into the white school, either one of two things must happen—either, (A), he must fall behind if he is put in the same grade because of that gap, or (B), you must put him back some grades and, therefore, he is put in with younger children, which creates problems. So that has been their main contention in support of their gradual desegregation plan.

Now, we understand that you are not testifying here as a professional educator, and you declined to give Mr. Rice an opinion on cross-examination as to the effect of taking a child who has been in the negro school system all along—well, say, he is in the ninth grade or tenth grade this fall, and putting him into the tenth grade in a white school system. We are talking about averages now. Of course, we un-

—333—

derstand there are plenty of negro children in the tenth grade that could very easily do the tenth grade work in the white school, but we all recognize there is this gap on the average, and I might say here that the School Board in the original hearings, did not contend that this gap resulted from any inherent differences in the race, just from a lot of factors that we needn't go into here—but what I am saying is if you take a tenth grade student who has never had any experience in white schools, and put him into the tenth grade in a white school, I am not asking you what the effect on the school would be, because you say you are not an educator, and you are not giving an expert opinion on any administrative prob-

lem that might create, but what would be the effect on the child, in your opinion, if he is put in, either in a grade over his head, or put back two or three years, so that he could take hold and keep up?

The Witness: The evidence we have, if you re-test school systems after desegregation, is that the gap

—334—

tends to narrow. Now, I don't know what happens to the individual child, this individual child or that individual child, but take the whole seventh grade in a formerly segregated system and within three years—now, you have combined negro and white. This is the experience in Washington, D. C., for example—they used to keep separate achievement test results for both the negro schools and the white schools. They desegregated the entire system top to bottom all at once. What happens over about a two to three-year period, the achievement test gap between white and negro students for the system as a whole goes away.

If you add in a low figure, it is going to pull your average down, and if you add in the negro average to the white average, the overall average will be lower, and in about three years averages up to where the white average was three years before, and there is only one place this can come from in this amount, and that is a narrowing of the gap for the negro students.

The Court: Here is what is bothering the Court.

—335—

Remembering we haven't been in school for a long time, but remembering back, for example, if you

were in the tenth grade and they expected you to have had geometry already and know it with a certain degree of proficiency, and so you are going to a school where they expect you to know it a lot more than the school you are in, and they start building on that, on that assumption that you do know that course that well, and you don't know it, I was just wondering what you would do. We are talking about averages. We know there will be a lot of exceptions, and I am not speaking now—I am not asking you about the problems in the school system, because you are not testifying about that, really, but I am just wondering what problems would be created from the point of view of the sociologist and social psychologist where you were faced with that situation?

The Witness: You have some kids who respond to challenge and pull themselves up. You will have some who become somewhat more discouraged than

—336—

they presently are with education. That is, I don't think you could point out any single overall response for all the children who would come in behind and move into a newly desegregated situation after they had been in the ninth or tenth grade. I think you have different kinds of responses. If you ask me my guess as to what the average would be, I guess on the average their performance would get better.

The Court: Well, of course, we assume from what you have said, that being put into that situation will be a factor which will motivate the child to try harder than he has been trying, and I would guess you are certainly right about that. That's just ordinary

human nature, that you would respond by trying to work harder, because they were demanding more of you and your fellow students would be operating at a higher level. But what occurred to the Court was that you might be faced with numerous situations where even though they were now more motivated, it was just beyond them to do that much

—337—

catching up. For example, I attended Central High School in Memphis, which I thought was a pretty good high school, but I suspect if you had taken me after I finished the tenth grade and entered the eleventh grade, taken me to Andover or Groton and put me in the eleventh grade, where I am sure they were doing a much higher level of work than we would have been doing at Central High School, that it might have created a very serious problem for me, and what is bothering the Court is, you might have somewhat the same relation between the negro schools, say, at the tenth grade level at Jackson and the white schools, as we have between Central High School in Memphis and Andover or Gratten. You see what I mean? And that has been a deep concern to the Court.

Of course, we realize that you can't constitutionally deprive these negro children of their right to a non-segregated education, or to put it more accurately, under the law, abolition of discrimination based on race, because in doing so you create problems, but

—338—

the Courts have indicated that in determining how fast you should go, the Court is entitled to consider

these problems. I suppose you would call them administrative problems, and that is what we are trying to find out.

Well, we want to ask you another question. As you know, under the law of Tennessee, a child has to go to school until he is, I believe, sixteen years of age. There is no law requiring anybody to teach school. And another problem has come to our mind, because the plaintiffs, as part of their right to the abolition of discriminatory education, are seeking to effect an integration of the faculties in Jackson, and it is their contention that they cannot have their whole constitutional right as long as these faculties are segregated, and there is a good deal of law to that effect. We won't go into that with you, because you are not concerned with that. But we are wondering has there any study been made anywhere that you know of in this general area under comparable circumstances of what happens when a Court or-

ders a desegregation of faculties. I know that generally when this sort of relief has been sought, the Courts have taken under advisement and not done anything about faculty integration until they saw how the plans for the students were doing, but I wonder if you know of any place where it has been actually tried and ordered by the Court, and what was the reaction of the faculties, both negro and white?

The Witness: Well, Wilson County—there is not a great deal of faculty desegregation, but Wilson County here in Tennessee has some.

The Court: Has Judge Miller entered an order on the Wilson County faculty?

The Witness: I am not sure of the exact legal status. It may have been an order or pre-trial conference, but they more or less volunteered.

Mr. Williams: Yes, he did.

The Court: Do you have any idea what the relative percentages were of negro and white teachers in Wilson County?

The Witness: No, I don't, Your Honor. The other

—340—

example, I think, is when a negro high school burned in Franklin County, there was eight or ten faculty members absorbed in the faculty of the white school, and they let the negro high school go on that.

Mr. Williams: That was Putnam County.

The Witness: The other instance that I can recall —well, Nashville is planning—I don't know what numbers.

The Court: Do you know of any experience in Nashville—have they actually done it in Nashville?

The Witness: No. It is on the planning board, to the best of my knowledge. But, to the best of my knowledge, the places where it has occurred, there has not been the mass exodus of white faculties from the system. As a matter of fact, one of the problems that has come up as a result of faculty desegregation or school desegregation is the loss of jobs by some negro teachers.

The Court: Well, we don't know this judicially. We understand there has been opposition to this

—341—

because of fear of the negro teachers, real or

imaginary, that they might lose their jobs. But I suppose that's not a problem for the Court.

The Witness: I know of no place where the predicted mass exodus has occurred at all. Might I just make one more comment in relation to a very real issue you were raising, Your Honor?

The Court: Yes.

The Witness: What happens to a child who is behind, and it's one of these balance issues, he comes in, let's say the ninth or tenth grade, and the question is, is he going to be so far behind that this situation is going to really lay him low, or is he going to respond to the challenge, or is he going to get something out of it, and there is the balance of these possible negative facts of having to pass up to this much gap against just letting the gap drag out for two and a half years—for that child, what is the better solution? It is a very complex issue.

The Court: As to what is better for him?

The Witness: Yes.

—342—

The Court: And what may be better for one might not be better for the next?

The Witness: No, sir. But in one, he at least has a chance, and the other, he doesn't.

The Court: Anything further from this witness?

Mr. Rice: No, sir.

Mr. Williams: I think you may have covered the only question I was going to ask you, and I just want to ask it anyway.

Dr. Eugene Weinstein—for Plaintiffs—Redirect —Recross

Redirect Examination by Mr. Williams:

Q. Regardless of this question that the Court has raised with regard to the possibility of a negro student who is behind having difficulty, would you say, as a sociologist, that he has had a better chance as a human being if, for example, he was exposed to good geometry with the opportunity to fall behind or get better, fall further behind or get better than if he had ever had the opportunity to be exposed to it? A. I believe that was the import of my comment to His Honor.

—343—

Q. It would be better for him to be exposed and have this opportunity, is that correct? A. Yes, sir.

Mr. Williams: That is all.
The Court: Anything further?
Mr. Rice: One question.

Recross Examination by Mr. Rice:

Q. Dr. Weinstein, is it better for a child to graduate from high school or to drop out? A. That depends.

Mr. Rice: Thank you.

Redirect Examination by Mr. Williams:

Q. What is the effect of a person, of a human being, sociologically, of a human being having an illusion that he has an education that he doesn't have? A. Potential future disappointment.

Dr. Eugene Weinstein—for Plaintiffs—Redirect

Q. Just as much as if he had dropped out in the first place, is that correct? A. In these cases, State Boards of Education and state legislatures, in my judgment, have

—344—

been fairly wise in not requiring that every student complete high school. Some students do not. Some students feel very embittered about school. They would be better off working, but I don't advocate high school drop out as a general principle.

Q. But there is no magic in handing anybody a high school degree or college degree? A. No, there is not.

The Court: I think you would say this, though—if someone graduated who had really done the work, if they could think pretty well, it might help them, mightn't it?

(Laughter)

The Court: Well, thank you very much, and you may step down.

(Witness excused)

The Court: Gentlemen, is there going to be any more proof in this case? We are going to adjourn until 2:00 o'clock.

Mr. Williams: Possibly not.

The Court: Well, if we don't have any proof, we

—345—

will be glad to hear your arguments.

Mr. Rice: I would like to hear whether there is or not, because I could turn loose considerable people. The Court asked about this symphony, and

these people are here, but I don't believe it is really material.

The Court: Well, maybe you had better put them on, because as we understand, Mr. Williams is making some contention about it, and he wanted you to present the people who knew the facts—it being your contention, as we understand at the pre-trial conference, that the School Administration had nothing to do with who the symphony decided to invite, and Mr. Williams asked you to get some proof on that.

Mr. Rice: We have it.

The Court: Other than that, do you have anything else, Mr. Williams?

Mr. Williams: Except for this: We had affidavits attached to our original motion, if Your Honor please, and while I think that Mr. Rice has admitted substantially everything alleged in those affidavits,

—346—

at the same time I don't want to be caught napping, and I am prepared to put two or three of these intervening plaintiffs on and let them testify with regard to these original matters that we alleged regarding what happened last September, 1964.

It is primarily related to the transfer question, if the Court please.

The Court: Well, as we understood it, Mr. Rice conceded that as a general proposition where a negro child ended up in a negro elementary zone and applied to go to a white school outside of his zone, that, in general, he was turned down. I believe there are a couple of situations where you let them do it, where they lived near the border of the white school zone. Isn't that correct, Mr. Rice?

Colloquy

Mr. Rice: In general, we turned down these particular plaintiffs. There is no question about that. I have forgotten how many asked, or how many went.

The Court: Well, these were in the category of

—347—

negro children who lived in a negro elementary school zone under the new unitary system, and they were seeking to go to a school in a white school zone, and they were turned down.

Mr. Rice: These plaintiffs, yes, sir.

The Court: And I think it is also undisputed by you that as a general proposition when a white child lived in a negro school zone, he, as a matter of course, was allowed to transfer out to go to a white school in whose zone he didn't live.

Mr. Rice: That is right.

The Court: All right. We will adjourn now until 2:00 o'clock.

(ADJOURNMENT)

—348—

(AFTERNOON SESSION)

The trial of the case was resumed on this date, June 18th, 1965, at 2:00 o'clock, p. m., when and where evidence was introduced and proceedings had as follows:

The Court: Mr. McTighe, we understand you have a criminal matter that you would like to present at this time.

Mr. McTighe: Yes, sir, if Your Honor please.

(The trial of this case was interrupted for the presentation of a criminal matter at this time.)

The Court: Mr. Rice, I believe that you have additional proof?

Mr. Rice: Yes, sir. The Court will recall that earlier in this proceeding Mr. Albert Porter took the stand and testified on a limited basis and cross-examination was deferred in this matter, and I would like at this time to examine Mr. Porter. He is one of the plaintiffs in this matter.

The Court: All right. We will have Mr. Porter come around.

—349—

ALBERT PORTER, the said witness, having been previously duly sworn, resumed the stand and testified further as follows:

The Court: You understand you are still under oath, Mr. Porter?

The Witness: Yes, sir.

Cross-Examination by Mr. Rice:

Q. Mr. Porter, you testified earlier that you were the Business Manager of Lane College? A. No; the accountant.

Q. Now, I will ask you if you are not also a plaintiff that intervened in this proceeding? A. That's correct.

Q. You have a daughter that I believe lived in the Lincoln district and registered in the Whitehall district? A. Yes, sir.

Q. And your child was subsequently assigned to the Lincoln district in which you live? A. Right.

—350—

Q. Do you hold a position with the National Association for Advancement of Colored People in Jackson? A. Yes. I am the Educational Chairman.

Q. Now, the Educational Chairman—another way of putting that, you are pretty much the strong arm of Dr. Bell as the President? A. Yes, sir.

Mr. Williams: Of course, we object to the relevancy of all this.

The Court: We don't quite know yet whether it is relevant or not. I will overrule the objection at this time.

By Mr. Rice:

Q. You are pretty active in the proceedings of the National Association for Advancement of Colored People in Jackson, aren't you? A. Yes.

Q. I didn't ask that for information, because I already know it, but simply for the record.

Now, Mr. Porter, these plaintiffs that intervened at the same time you did who had their children do the same thing that you did with your child, apply to go from the

—351—

district in which they lived into some adjacent district, were pretty well located and rounded up by you, weren't they?

Mr. Williams: I object to that, if Your Honor please. That is irrelevant.

The Court: What would be the relevancy of their motivation, Mr. Rice?

Mr. Rice: The real plaintiff in this lawsuit is the National Association for the Advancement of Colored People; that is the relevance. These plaintiffs have not paid anybody any attorney fees.

The Court: Let me say this on that question: There is absolutely nothing wrong with the National

Association for Advancement of Colored People procuring counsel for these plaintiffs and bringing this lawsuit. I don't think there is any question about that. Now, we understand it is your contention, however, that these plaintiffs cannot recover any fee resulting from this present round of litigation, for several reasons—one of which is that they haven't actually incurred any contractual liability to any lawyer to pay a fee. Now, if that is what you

—352—

are getting at, we think you are entitled to go into it, but I think it is immaterial, the fact that the NAACP induced these people to seek to get into these schools, and thereafter, to file this lawsuit.

Mr. Rice: The Court is, of course, correct on that phase of it, but there is another phase which I have not yet gotten into that I think is material. Well, I will get to it and see what the Court says when I get to it. But, of course, that is what I am leading up to, Mr. Porter.

Q. As a plaintiff in this lawsuit, have you paid Mr. Williams a fee?

Mr. Williams: That is objected to for the record.

The Court: On what basis?

Mr. Williams: On the basis of whether or not—well, that's all right. I withdraw the objection.

The Court: All right. Go ahead, Mr. Rice.

By Mr. Rice:

Q. Have you paid Mr. Williams a fee? A. I paid what was required at the time.

—353—

Q. At what time? A. At the time that I asked him to come down and counsel with me and with the other plaintiffs in this case, and at that time it was asked what would the financial obligation be, and it was required that each parent at that time would give him a retainer fee, and that was given.

Q. Each parent paid that? A. Each parent paid.

Q. Every parent that is listed on here as an intervening parent, an intervening plaintiff? A. To my knowledge.

Q. And that was how much? A. $5.00.

Q. As to the previous plaintiffs, did they make any payment to Mr. Williams, the original plaintiffs, Brenda Kay Monroe and those people? A. I can't testify to that fact. I can testify that they were requested to do so.

Q. The bulk of it, though, is being furnished by the National Association for the Advancement of Colored People, isn't it, through the Legal Aid Fund? A. That has not come to my knowledge. They have not said to us that they would bear the expenses.

—354—

Q. Have you received any bills from Mr. Jack Greenburg or James M. Neblitt or Derrick A. Bell, Jr., of New York? A. Not at this time.

Q. Who are those people? A. They are officers in the NAACP.

Q. And they haven't billed you for anything or any of these other plaintiffs that you know anything about? A. To my understanding, and I think to the other plaintiffs, the financial obligations would not come before us until the litigation had been completed.

Q. Now, Mr. Williams, I believe, is counsel for the NAACP? A. Yes, he is.

Q. What do you call him, Regional or Area Counsel? A. State.

Q. Is he paid a salary by the NAACP? A. I don't know.

Q. Now, Mr. Porter, I believe that you state in your motion for relief that you did not find out until August the 29th, two days before school started in 1964, that the request for transfers of the various plaintiffs here would

—355—

not be granted. A. Well, it was on Saturday that the letter came in the mail.

Q. And the school started on Monday? A. Right.

Q. And this very lengthy petition here was filed on the 4th day of September, right? A. I don't know what the date was, but it was filed Sunday. We called him to come to see us on Sunday.

Q. Who? A. Mr. Williams.

Q. Now, how did all of you happen to get together so quickly? A. Well, when this came to us, inquiries were made to me, and I thought what we should do was have a meeting and we all met at Lane College. At the same time Dr. Bell was asked to call Mr. Williams, which he did, and Mr. Williams consented to come here and talk with us.

Q. And within that period of time, then, this was prepared and filed? A. It was all done on Sunday, whatever date it was.

Q. After you parents met and were dissatisfied with the action of the Superintendent, did you, or any parent, to

—356—

your knowledge, or any counsel say a word to the City Attorney, to the School Superintendent, to the Commissioner of Education, or to any member of the Board of Commis-

sioners of the City of Jackson in regard to those transfers? A. Well, I didn't. I don't know about the others. I did not.

Q. Did you pretty well supervise the meeting of those parents? A. Well, I called them together, and we were there, and when Mr. Williams came, we told him what we wanted, and if that is supervision, I did.

Q. Did Mr. Williams suggest to you that you appeal this decision to the City Commission?

Mr. Williams: Of course, that is objected to, if Your Honor please. He is now getting into a matter of advice and consultation as between client and attorney, and that is a privileged matter.

The Court: I believe you are right about that.

By Mr. Rice:

Q. Mr. Porter, did you or any parent at this meeting discuss carrying this matter to the Superintendent, or to

the Commissioner of Education or to the Board of Commissioners of the City of Jackson? A. As far as I can recall, I didn't make the suggestion, but I think someone brought up the idea. I believe the word "appeal" wasn't named, but something was said about the procedures in the transfers, but I am not sure exactly what came of this, because my opinion at that point was that it was almost impossible for me to check with the School Board, because when I received the letter at 2:00 o'clock in the mail Saturday, the office of the School Board was closed, and I was to send my child to school Monday morning, 8:00 o'clock the next day, so there was no opportunity for that.

Q. Did you attempt to see them on Monday, Tuesday or Wednesday? A. No.

Mr. Williams: Of course, I object to this on the ground of relevancy in view of the admissions in the defendants' replication and the fact that the Court—

The Court: (Interposing) We don't think that their failure to seek that appeal would have any

—358—

significance on the constitutional issue we have before us, but it might have some significance on the claim for attorney fees; so on that basis, we think it is admissible.

By Mr. Rice:

Q. What I am asking you is—did you make any effort at all to secure a ruling, either from me as City Attorney, or from Mr. Langford, the Commissioner, or any member of the Board of Commissioners? A. I didn't, no.

Q. Now, Mr. Porter, there has been three proceedings filed in this matter, one immediately following the 1964 decision of the Court right after the schools began. There was appeal filed there, and motion for further relief, and then in September of last year, and again, I think, in October or maybe November of last year, there were petitions for further relief filed before this Court. Since the order was handed down on August 20th, 1964, by this Court, have you, or any parent associated with this lawsuit, made any effort whatever to carry a grievance or to seek redress from the Board of Commissioners of the City of Jackson? A. Well, I haven't, and I was under the opinion that you

—359—

were to carry—I am using that, because you are speaking in terms of the School Board—you were to carry out the orders of the Court, and if you did not, I was under the

impression that we were to come back to the Court for this relief.

Mr. Rice: I believe that is all.

Redirect Examination by Mr. Williams:

Q. Mr. Porter, I believe you were residing in Jackson at the time this lawsuit was originally brought, were you not? A. Right.

Q. And was your child a member of the school system at that time, a student in the school system at that time, when the suit was originally brought in January of, I believe, 1963? A. No, she wasn't in the school system. She had not reached school age.

Q. When did she first enroll? A. In September of this past year.

Q. September of 1964? A. Right.

—360—

Q. Now, were the other parents that went along with you when you attempted to register your child in school in September, 196— A. They didn't necessarily go with me. They went individually.

Q. Going back a little bit, do you recall when the Court originally approved a modified plan for the defendants in this case in August of 1963—you recall that, do you? A. Yes.

Q. Do you recall that we had gotten some preliminary injunctive relief in January or February, providing for admission of children of some named plaintiffs to specific schools? A. Yes.

Q. And do you remember that when the Court approved the plan in August of 1963 providing for the desegregation of the first three grades in September of 1963, that some

of those children of named plaintiffs were in grades higher than the third grade, the Walters children and, I believe, the Monroe girl, and one girl was finishing Tigrett Junior High School, I believe, or something like that? A. Yes.

—361—

Q. And do you recall that application was made to the defendant at that time for relief as to letting those children remain where they had been for that period of time, rather than resegregate them? A. Right.

Q. And do you recall what Mr. Russell Rice's attitude was then and what the Defendant Board's attitude was then? A. Yes. It was that the Court had given a plan, and they would follow that plan.

Q. And they were going to send these children who had been sent to desegregated schools by the Court's preliminary injunctive order back in the segregated schools? A. Yes, sir.

Q. One of the children in a desegregated junior high school was to be sent back to a segregated high school? A. That's correct.

Q. Now, was it necessary for the original plaintiffs to file a motion for further relief in order to get relief in that regard? A. It was.

Q. And did we do so and, as a matter of fact, did the

—362—

Court enter an order in October of 1963, about the 9th of October, granting us that relief? A. Yes.

Q. Did the Court, however, in that order of October, 1963, further approve defendant's plan leaving all the children who were in school in October, in the 1962-63 school year, in the schools where they were, if they wanted to stay there? A. Yes, sir.

Q. Now, did the Board thereafter publish and make known to the public a transfer plan which, in effect, stated as to children entering the first grade, they were to just take the children wherever they wanted to register them to school of their choice, and then the Superintendent would either leave them there, or return them back to the school of their school zone? A. That was a plan.

Q. Now, do you remember that under the defendant's zoning plan which they then had, which was substantially the same as this one, with a couple of minor changes that they have made—do you remember that in the testimony that they gave here in July of 1963, there were many white children zoned for South Jackson? A. Right.

—363—

Q. That there were many children likewise zoned for this Washington-Douglas School? A. Yes.

Q. And that there were likewise some children zoned for the Lincoln Elementary School? A. Right.

Q. Now, did any of those white children show up in those schools in September? A. Not to my knowledge.

Q. Do you know a little girl by the name of Myrtle Gooch? A. I know the family, yes.

Q. Did you have any knowledge of an application that she made to the defendants to attend Alexander School in September of 1963? A. Yes.

Q. What happened to her application? A. Well, the School Board turned her down.

Q. One negro child made application to go to a white school out of a negro zone and they turned her down? A. Right.

—364—

Q. To your knowledge, was she the only negro child in a seven-thousand student school system who made such an

application? A. Yes, I think she was the only one at that time.

Q. And I believe she followed their course, she went on to Alexander School and entered and after leaving her there, they forced her to go back to South Jackson, which was already overcrowded, is that right? A. Right.

Q. Now, this past September, in September of 1964, I have here your affidavit along with the affidavit of some of the others, which says that on or about the 18th of August, 1964, you and all the other people named in your affidavit, including the Lyons child, the Ledbetter child and her mother, the Davis child, the Murrow child, the White and the Robinson child all presented yourselves at the respective white schools that are stated in your affidavits? A. Right.

Q. Now, Mr. Porter, under the defendant's zoning plan—I mean under their transfer plan, that was the procedure you were to follow, to go on to the school of your choice—

and all your children were first grade children, were they not? A. Yes, in this case.

Q. To your knowledge, were any white children, first grade children who came to those schools that day from negro zones turned down, from zones of negro schools—were any children turned down? A. Not to my knowledge.

The Court: Isn't all this stipulated?

Mr. Williams: I am just working up to this, if Your Honor please:

Q. Now, your affidavit states that eleven days later on the 29th of August, 1964, you received a letter from the Superintendent, doesn't it? A. Yes.

Q. Now, is that true? Was that when you received those letters? A. I received mine at 2:00 o'clock.

Q. Mr. Porter, with the passage of ten days' time from the time you registered in the school, did you assume that if the School Board was going to turn down your transfer request that they would let you know in time, so you could

—366—

try to do something about it? A. Actually, when I didn't hear from it on Friday, I assumed that it was accepted, because I felt if I had to go in to see the School Board, then I would have had that chance, and when I received it on Saturday, I didn't have a chance.

Q. Mr. Porter, what did you assume when you got these last minute letters from the Superintendent on the Saturday before school was to open on Monday? A. My assumption was that they did not give me a chance for anything and that it was so done that I would not have a chance to seek any relief at that point; that was my supposition.

Q. As a matter of fact, did you call me up, or have Dr. Bell or somebody call me up and ask me to come down there? A. Yes.

Q. Did I spend my whole Sunday from early morning until late night fooling with you folks over there at Lane College? A. Yes.

Q. Did I bring my dictating machine and dictate fifteen

—367—

or twenty affidavits right there live trying to get bit by bit the information out of each one of you? A. Right.

Q. Each one of you have had a different situation, and we had to organize and try to get affidavits on each one of you? A. That's correct.

Q. Now, you said we got it all on that day. I will ask you whether or not I did not take the information back

on my dictating machine, and then come back on Monday, the 31st, and go over those affidavits down in Mr. Ballard's office, and if Mr. Ballard didn't spend a day with it, too, getting those affidavits signed, if it didn't take us two or three days to get all you folks in and get them signed and get this motion in shape so it could be filed on the 3rd or 4th? A. Yes, that's true.

Q. Now, I will ask you whether or not you did not come down here with me on the 18th of September for pre-trial conference? A. I did.

Q. After the defendants had filed the replication? A.

Yes.

Q. And state whether or not it is true that the Court indicated in that pre-trial conference that we were going to have to come up with something really good in order to get him to have something to chew on on this gerrymandering issue? A. Right.

Q. And state whether or not the Defendant City Attorney and/or the Superintendent stated that they didn't have any surveys of the school system and weren't going to make any? A. That's right.

Q. And state whether or not you then stated that you would make the surveys and requested me to attempt to obtain the necessary technical and professional help? A. Yes. I said to you that I could get the parents to take a personal survey, door by door, and I think when you made that known, the Court said that the record could be given, and then I said to you that we would do the preliminary work on the records if you would get someone to interpret it and put it in good form for presentation here at the court.

—369—

Q. Do you have any idea how many manhours you and your people over at the Lane College have put in on surveying those records? A. Well, I will tell you that I did most of it with some assistance from the students, but it took a month and a half working until about 4:00 o'clock every night, plus the work that the students spent on it gathering the data.

Q. May it please the Court, I would like to have that exhibit—I will hand you there a document which is a copy of an exhibit that has been introduced here purporting to represent the dates that Drs. Bardwell and Herman came down. Incidentally, are they the gentlemen that we engaged for you in connection with this? A. Yes, they are.

Q. Was that with your approval and the approval of all the other plaintiffs in this case? A. Yes. This was at our request.

Q. Now, I will ask you to look at those dates and state whether or not you have personal knowledge of their being here on those dates and whether or not you were present and working with them in trying to get up this data and

—370—

these exhibits? A. Yes. These are the dates, because I had to make reservation for them to come down, even at the local motel.

Q. I believe the first day they came to Knoxville and you came up to Knoxville, is that correct? A. Nashville.

Q. Yes, to Nashville. How many days, all told, did they spend down here in Jackson compiling that information? A. The first time they spent two days, and the next—they came back again and spent two days.

Q. Did I come with them? A. Yes.

Q. Did Mr. Ballard come over, too, and also spend his time with them? A. He did.

Q. Working on this matter? A. Yes.

Q. Now, state whether or not we had another pre-trial conference in this case two weeks ago? A. Yes.

Q. Did you have to come down here in connection with that? A. Yes.

—371—

Q. And did I come, and did Mr. Ballard come? A. Yes.

Q. This is just the proceedings on this motion for further relief. I take it you are familiar with the many proceedings we had from the time this suit was filed, are you not? A. Right.

Q. Mr. Porter, how long have you been in Jackson? A. I will have been in Jackson nine years in September.

Q. And how long have you been interested in this school situation? A. Well, from the beginning.

Q. Has the School Board ever voluntarily granted one single request for desegregation of the school system, except during that brief period when it thought that it could apply the pupil assignment law? A. That is the only time.

Q. And how many negroes did it let in during that time? A. Three—originally three, and the next year they let four more. But the first year they had permitted three, at Tigrett Junior High.

Q. How long had you all been requesting the School

—372—

Board to desegregate the school system down here? A. Well, I came there in '56.

Q. Two years after the first decision, is that right? A. Yes, and I think before my coming, I think something had been done, but I sort of got involved then. I don't know

what happened before '56, but I know in '56 organizational activities started to try to get these schools desegregated.

Q. Mr. Porter, I have several letters which are the authentic original copies of letters that you handed to me. Will you look at those and see if you can identify them?

The Court: Mr. Rice, do you want to look at them?

Mr. Rice: Well, I don't really think it is necessary. I don't think it makes any difference. I will look at them.

I think we have stipulated on those anyway.

Mr. Williams: Well, I won't clutter up the Court's file, then.

The Court: All right, sir.

—373—

By Mr. Williams:

Q. Mr. Porter, were you with the original plaintiffs when they first came to Nashville and engaged us? A. No, I didn't go to Nashville with them, but I knew that they all went. I didn't go with them, but I was with them before they left Jackson. I did not accompany them to Nashville, though. I knew they were enroute.

Q. But you knew that we didn't come down here to Jackson and ask them to let us handle this case? A. No, you didn't. We requested it.

Mr. Williams: I believe that is all.

Mr. Rice: Nothing further.

The Court: Do you have any further proof?

Mr. Rice: I have Mrs. McLemore to testify in regard to the symphony problem.

The Court: All right.

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT AT MERRY JUNIOR HIGH SCHOOL
1964-65

Grade	Total Enrollment
7	268
8	287
9	197
Total	752

All Negro

TOTAL ENROLLMENT AT LINCOLN ELEMENTARY SCHOOL
1964-65

Grade	Total Enrolled
1	136
2	122
3	123
4	111
5	105
6	112
Total	709

All Negro

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT AT SOUTH JACKSON ELEMENTARY SCHOOL
1964-65

Grade	Total Enrolled
1	120
2	112
3	103
4	88
5	101
6	65
Total	589

All Negro

TOTAL ENROLLMENT HIGHLAND PARK SCHOOL
1964-65

Grade	Total Enrolled
1	99
2	107
3	103
4	94
5	98
6	89
Total	590

All White

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT AT TIGRETT JUNIOR HIGH
1964-65

Grade	Total Enrolled
7	251
8	228
9	220
Total	699

All White

TOTAL ENROLLMENT WASHINGTON DOUGLASS SCHOOL
1964-65

Grade	Total Enrollment
1	86
2	75
3	65
4	72
5	69
6	67
Total	434

All Negro

TOTAL ENROLLMENT AT MERRY SENIOR HIGH SCHOOL
1964-65

Grade	Total Enrollment
10	237
11	189
12	164
Total	590

All Negro

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT AT JACKSON SENIOR HIGH SCHOOL
1964-65

Grade	Total Enrollment
10	316
11	266
12	266
Total	848

White	Negro
847	1

TOTAL ENROLLMENT ALEXANDER ELEMENTARY SCHOOL
1964-65

Grade	Total Enrolled
1	129
2	135
3	109
4	105
5	119
6	118
Total	715

White	Negro
628	87

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT WHITEHALL SCHOOL
1964-65

Grade	Total Enrollment
1	69
2	56
3	58
4	51
5	55
6	45
Total	324

White	Negro
308	16

TOTAL ENROLLMENT PARKVIEW ELEMENTARY SCHOOL
1964-65

Grade	Total Enrolled
1	120
2	129
3	107
4	98
5	107
6	94
Total	655

White	Negro
654	1

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT AT JACKSON JUNIOR HIGH SCHOOL
1964-65

Grade	Total Enrollment
7	156
8	148
9	128
Total	432

White	Negro
431	1

TOTAL ENROLLMENT WEST JACKSON SCHOOL
1964-65

Grade	Total Enrolled
1	100
2	88
3	67
4	71
5	69
6	72
Total	467

White	Negro
453	14

Memorandum Decision of the United States District Court for the Western District of Tennessee

(filed July 30, 1965)

[Caption Omitted]

Plaintiffs have filed motions for additional relief, which raise these issues:

1. Whether the assignment and transfer plan and policies as actually carried out by the defendants violate plaintiffs' constitutional rights, and if so, to what extent must the plan or policies be amended;

2. Whether the amended unitary zones for elementary schools and the proposed unitary zones for junior high schools are gerrymandered to maximize segregation and thereby violate plaintiffs' constitutional rights;

3. Whether the plan for gradual desegregation heretofore approved by the court, viewed as of now, meets the constitutional standard of "all deliberate speed";

4. Whether plaintiffs are entitled, under the Constitution, to an order requiring the desegregation of faculty, administrative and supporting personnel, and faculty in-service training programs;

5. Whether plaintiffs are entitled, under the Constitution, to an order prohibiting segregation in curricular and extra-curricular activities;

6. Whether plaintiffs are entitled to recover attorneys fees incurred in connection with these motions.

We will dispose of these issues in the order in which they are set out above.

Memorandum Decision

At the outset it should be noted, as we have indicated, that plaintiffs are asserting Fourteenth Amendment rights alone, and are asserting no rights under any Act of Congress.

In dealing with the multifarious issues that may be presented in school desegregation cases, there frequently is difficulty in deciding a particular issue even if the applicable principle of law has been fairly well crystalized. This is especially true in this field because, even though so crystalized, an applicable principle is of necessity a general principle which must be applied to myriad factual situations. More difficulty is encountered, however, when an underlying general principle has not yet become clear. An example of this is the lack of complete clarity as to whether the Constitution requires only an abolition of compulsory segregation based on race or requires something more. This general question must first be answered before we can deal with the assignment and transfer issue and the gerrymandering issue.

This court has heretofore considered the question as to whether the Constitution requires only an abolition of compulsory segregation based on race. *Vick, et al.* v. *Board of Education of Obion County, Tennessee,* 205 F. Supp. 436 (W.D. Tenn. 1962); *Monroe, et al.* v. *City of Jackson, Tennessee,* 221 F.Supp. 963 (W.D. Tenn. 1963); and *Monroe, et al.* v. *Madison County, Tennessee,* 229 F. Supp. 580, (W.D. Tenn. 1964). The latter two opinions were rendered at earlier stages of the separate proceedings in this action. We concluded in these opinions that abolition of segregatio nbased on race is all that the Constitution requires. We based this conclusion not only on our interpretation of the second *Brown opinion* (349 U.S. 294 (1954)) and *Cooper* v. *Aaron,* 358 U.S. 1 (1958), but also on the now famous specific statement to that effect

in *Briggs* v. *Elliott*, 132 F.Supp. 776 (E.D. S.C. 1955), which was a *per curiam* opinion by three-judge court presided over by Judge Parker of the Court of Appeals for the Fourth Circuit. However, plaintiffs again earnestly contend that the Constitution requires an integrated education, and so we have taken this occasion again to review the law.

We find that the following opinions, among others, cite and approve the statement in *Briggs* v. *Elliott, supra*, to the effect that the Constitution requires only an abolition of compulsory segregation based on race: *Kelley* v. *Boar dof Education of Nashville*, 270 F.2d 209, 226 (6th Cir. 1959); *Bell et al.* v. *School City of Cary*, 324 F.2d 209, 213 (7th Cir. 1963); *Griffin* v. *Board of Supervisors of Prince Edward County*, 322 F.2d 332, 336 (4th Cir. 1963); *Dillard* v. *School Board of City of Charlottesville*, 308 F.2d 920, dissent at p. 926, (4th Cir. 1962); *Boson* v. *Rippy*, 285 F.2d 43, 48 (5th Cir. 1960); *Avery* v. *Wichita Falls Independent School Dist.*, 261 F.2d 230, 233 (5th Cir. 1957); *Armstrong* v. *Board of Education of Birmingham*, 323 F.2d 333, dissent at p. 346 (5th Cir. 1963); *Taylor* v. *Board of Education of New Rochelle*, 294 F.2d 36, dissent at p. 47 (2nd Cir. 1961). It is interesting to note that the Fifth Circuit in a very recent case (*Singleton* v. *Jackson Municipal Separate School Dist.*, —— F.2d ——, decided June 22, 1965), recognizing that it had more than once approved the statement in *Briggs*, said that it now "should be laid to rest" and that ". . . the second *Brown* opinion clearly imposes on public school authorities the duty to provide an integrated school system." There is other authority in support of the view now taken by the Fifth Circuit, but the clear weight of authority in the Courts of Appeal and District Courts sup-

ports the view taken in *Briggs* and, as stated, our Court of Appeals in the *Kelley* case, *supra*, seems to subscribe to the *Briggs* view.

This question as to what the Constitution requires comes into sharper focus in two different contexts: one is a situation in which "honestly" arrived at unitary zones result in *de facto* school segregation because of existing racial housing patterns; the other is a situation in which a voluntary assignment and transfer provision, not based on race, results in the continuance of segregation. In *Northcross et al.* v. *Board of Education of Memphis*, 333 F.2d 661 (6th Cir. 1964) our Court of Appeals recognized that there is no constitutional obligation to draw zone lines to maximize integration. See also, to the same effect, *Downs et al.* v. *Board of Education of Kansas City*, 336 F.2d 988 (10th Cir. 1964), cert. denied 380 U.S. 914 (1965). The Supreme Court has not dealt specifically with the first situation, but it has done so with the second. In *Goss, et al.* v. *Board of Education of City of Knoxville*, 373 U.S. 683 (1963), the Supreme Court struck down transfer provisions which allowed pupils who, under the rezoning, would be required to attend a school in which they would be in a racial minority to transfer to a school in which they would be in a racial majority. In so doing, the Court said at pp. 686-687:

> "It is readily apparent that the transfer system proposed lends itself to tperpetuation of segregation. Indeed, the provisions can work only toward that end. While transfers are available to those who choose to attend school where their race is in the majority, there is no provision whereby a student might transfer upon request to a school in which his race is in a

minority, unless he qualifies for a 'good cause' transfer. As the Superintendent of Davidson County's schools agreed, the effect of the racial transfer plan was 'to erpmit a child [or his parents] to choose segregation outside of his zone but not to choose segregation outside of his zone.' Here the right of transfer, which operates solely on the basis of a racial classification, is a one-way ticket leading to but one destination, i.e., the majority race of the transferee and continued segregation. This Court has decided that state-imposed separation in public schools is inherently unequal and results in discrimination in violation of the Fourteenth Amendment. Brown v. Board of Education, 347 U.S. 483, 98 L.ed 873, 74 S. Ct. 686, 38 ALR 2d 1180 (1954). Our task then is to decide whether there transfer provisions are likewise unconstitutional. In doing so, we note that if the transfe rprovision were made available to all students regardless of their race and regardless as well of the racial composition of the school to which he requested transfer we would have an entirely different case. Pupils could then at their option (or that of their parents) choose, entirely free of any imposed racial considerations, to remain in the school of their zone or to transfer to another.

"Classification based on race for purposes of transfers between public schools, as here, violate the Equal Protection Clause of the Fourteenth Amendment."

And the Court further said at pp. 688-689:

"The alleged equality—which we view as only superficial—of enabling each race to transfer from a de-

segregated to a segregated school does not save the plans. Liwe arguments were made without success in Brown, 347 U.S. 483, 98 L.ed. 873, 74 S.Ct. 686, 38 ALR 2d 1180, supra, in support of the separate but equal educational program. Not only is race the factor upon which the transfer plans operate, but also the plans lack a provision whereby a student might with equal facility transfer from a segregated to a desegregated school. The obvious one-way operation of these two factors in combination underscores the purely racial character and purpose of the transfer provisions. We hold that the transfer plans promote discrimination and are therefore invalid.

"This is not to say that appropriate transfer provisions, upon the parents' request, consistent with sound school administration and not based upon any state-imposed racial conditions, would fall. Likewise, we would have a different case here if the transfer provisions were unrestricted, allowing transfers to or from any school regardless of the race of the majority therein. But no official transfer plan or provision of which racial segregation is the inevitable consequence may stand under the Fourteenth Amendment."

It appears that the Court held that these transfer provisions could not stand for two separate reasons: first, on their face they contained an invalid racial classification, and second, they could operate only to perpetuate segregation. However, the Court expressly recognized that a transfer provision or policy which did not contain a racial classification and which allowed transfers as readily to a school in which the applicant would be in a racial minority as it allowed transfers to a school in which the

applicant would be in a racial majority would be valid. The Court therefore did not hold that integration is a required end result of the provision or policy. And, as we said in our earlier opinion in this very action (221 F. Supp. 968, 974), it is difficult to see how it could be held that segregation resulting from purely voluntary choice could violate the Fourteenth Amendment as it would not be "state-imposed separation." Similarly, it is difficult to see, for the same reason, ho wit could be held that segregation that resulted from "honestly" arrived at geographical zoning could violate the Fourteenth Amendment. We therefore conclude, as we concluded before, that the Constitution does not require integration and that it only requires the abolition of compulsory segregation based on race.

We come now to consider the contention of plaintiffs that the assignment and transfer plan or policy as actually carried out by defendants deprives plaintiffs of their constitutional rights, and if so, to what extent must the plan or policies be amended. In the plan heretofore approved by this Court in the summer of 1963, pupils already attending school in the system during the 1962-63 school year were to be allowed to continue in the school they were attending until graduation irrespective of whether they lived in the new unitary zone of that school, provided that all pupils who lived in the unitary zone of the school and who were entitled for that reason to attend the school would have a preferential right to attend. We approved this provision for reasons set out in our opinion (221 F. Supp. 968, 972), pointing out that the provisions would expire by its own terms in a relatively few years. With respect to assignments and transfers generally, we merely held (221 F. Supp. 965, 971) that defendants could adopt any plan o rpolic ywith respect to desegregated grades,

provided that no assignment or transfer could be based on race or have as its purpose the delay of desegregation as contemplated by the plan.

It appears that defendants, in two particulars, have gone beyond what they were allowed to do with respect to assignments and transfers:

1. They have allowed pupils as a matter of course to be assigned or to be transferred out of their unitary zones to a school in which they would be in a racial majority and have not allowed pupils as a matter of course to be assigned or to be transferred out of their unitary zones to a school in which they would be in a racial minority. More specifically, they hiave allowed white pupils as a matter of course to attend schools, outside of their unitary zones, in which white pupils predominate, and have allowed Negro pupils as a matter of course to attend schools, outside of their unitary zones, attended only by Negroes but they have denied Negroes (and specifically intervening plaintiffs) the right to attend predominantly white schools outside of their unitary zones. This plan or policy clearly deprives plaintiffs of their constitutional rights, as was held by the Supreme Court in the *Goss* case, *supra*, and is clearly contrary to our prior holding.

2. They have treated pupils, after they were allowed in 1963-64 and 1964-65 to attend schools outside of their unitary zones, as if they were thereafter covered by the approved provision allowing only pupils attending in the system in 1962-63 to continue until graduation in the school in which they were then enrolled. This approved provision, by its own terms, applied only to pupils attending in the system in 1962-63.

If defendants intend to continue this policy of allowing white and Negro pupils to attend schools outside of their unitary zones where they will be in a racial majority, they must, beginning with the 1965-66 school year, also allow white and Negro pupils to the same extent and under the same terms to attend schools outside of their unitary zones where they will be in a racial minority. This is required by the *Goss* case, *supra*, and by the decree heretofore entered. Moreover, those Negro pupils who have heretofore applied for and been denied the right to attend predominantly white schools outside their unitary zones must be admitted to such schools, at least in the school year 1965-66, if they so desire. This is necessary to vindicate the Constitutional rights which have been denied them, whether or not the defendants choose to follow the policy herein approved, of allowing pupils to attend schools outside their unitary zones irrespective of whether they will be in a racial majority or minority.

It appears that, in carrying out their policy of allowing white and Negro pupils to attend schools outside their unitary zones in which they would be in a racial majority, defendants have not required these pupils to register in the schools of their unitary zones and then to apply for a transfer. Rather, they have allowed these pupils to register directly in the schools outside of their zones. Plaintiffs contend that, if defendants choose to go forward with the amended policy and plan which the Court is here approving, each pupil should be required each year to register in the school of his unitary zone and apply for a transfer; this is necessary, argue plaintiffs, to make the choice more realistic. More specifically, it is argued that, given the long history of segregation, white and Negro pupils would be much less likely to choose to attend the school of the

unitary zone in which they live, if they would be in racial minority in that school, if they are allowed to register directly in a school in another zone in which they would be in a majority. While we believe, as we have held, that a system of voluntary choice is constitutional, we also believe that every safeguard should be had in insure that choices will be conscious and considered choices and that such a choice will more likely be made if pupils are required each year initially to register in the school of the zone in which they live. Accordingly, we conclude that this must be required by defendants.

With respect to the other particular in which defendants have gone beyond what they were allowed to do, pupils who were not in the school system in 1962-63 shall not have the right, as do pupils who were attending during that year, to continue until graduation in a school outside their unitary zone.

The next issue presented is whether the amended unitary zones for elementary schools and the proposed unitary zones for punior high schools are gerrymandered so as to maximize segregation. Before dealing with this issue, we should note that plaintiffs first contend that even if the zones are not gerrymandered, they will create a large measure of *de facto* segregation, and therefore they must be redrawn to bring about more integration. However, we dealt with this contention in our earlier opinion in this case (221 F.Supp. 968, 973), and we have heretofore dealt with it again in this opinion. We have reached the conclusion that "honestly" drawn zone lines, which result in *de facto* segregation, do not deprive plaintiff of any constitutional rights.

In approaching the gerrymandering issue, we must first ascertain from the adjudicated cases what constitutes

gerrymandering in school zoning. The *Northcross* case, *supra,* and the *Downs* case, *supra,* hold that a school board may, in its discretion, use any rational basis for drawing zone lines but that it, of course, cannot consider race as a factor. *Northcross* specifically holds that the motive of minimizing the disturbance of the people and the motive of preserving school loyalties are not proper considerations in zoning. *Northcross* recognized that such considerations as utilization of the buildings, proximity of the pupils to the schools, and natural boundaries are proper considerations. *Northcross* also holds that, when challenged, the burden of proof is on the school board to show that boundaries were not drawn with a view to preserve the maximum amount of segregation.

In an earlier stage of these proceedings the Court approved elementary school zones as submitted by defendants but, on these motions for further relief, allowed plaintiffs to reopen the question as to whether these zones are gerrymandered. Defendants have redrawn the boundary between West Jackson and South Jackson elementary schools and, as so amended, have submitted these elementary school zones for approval. Defendants have, pursuant to an order of the Court heretofore entered, established unitary zones for the three junior high schools and, by consent of all parties, the hearing with respect to these zones was held concurrently with the hearing on plaintiffs' motions for further relief. It is the contention of plaintiffs that both the elementary school zones and the junior high school zones are gerrymandered and that the Court should appoint a master to redraw the zone boundaries or require the defendants to redraw them and resubmit them for approval.

Defendants have prepared and introduced into evidence maps reflecting the location of the schools, the zone boundaries, and the location of the homes of white (in blue) and Negro (in red) children of school and pre-school age. Defendants also offered in evidence exhibits showing the capacity of the schools, the number of pupils that have been attending each, and the average size of classes. The superintendent testified that the zones were drawn without regard to race and are the result of a consideration of utilization of buildings, proximity of pupils to the schools and natural boundaries.

In addition to contending that defendants' proof shows on its face that the zones are gerrymandered, plaintiffs offered two expert witnesses, who had also prepared maps, and who contended that the zones are gerrymandered. However, the value of the testimony of these experts was undercut by the fact that they assumed that it is the duty of defendants to maximize integration because of educational benefits that would, in their opinion, flow therefrom. The value o ftheir testimony with respect to elementary schools was further somewhat undercut because their maps were aimed to show the amount of *de facto* segregation that has resulted after two years under the plan. However, in view of voluntary transfers by white and Negro pupils, the degree of actual segregation in these schools does not itself show that the zones are gerrymandered. The value of the testimony of these experts with respect to junior high schools was somewhat undercut because they not only again assumed a duty to maximize integration but also assumed that defendants had the duty to adopt a "feeder" system whereby certain elementary schools would send their graduates only to a particular junior high. These experts admitted that in many instances the question as to where a

boundary should be drawn is one of judgment as to which honest experts could disagree.

We believe that, under the *Northcross* case, *supra,* the question whether the zones are gerrymandered should be determined primarily by consideration of the utilization of buildings, proximity of pupils to the schools, and natural boundaries.

It would be useless to set out in this opinion the relevant facts with respect to utilization, proximity and natural boundaries as to each elementary school zone. (It should be noted here that, as to utilization, the best information we have is the capacity and enrollment of each school during the past school year, which, in view of voluntary transfers, may not be an accurate projection as to the coming year and future years.) Rather, we will discuss only those boundaries as to which there apepars to be gerrymandering.

The most recent figures show that South Jackson is over enrolled and that West Jackson is under capacity. The boundary between these unitary zones as approved by the Court places Negro pupils who live much closer to West Jackson (which has been a predominantly white school but has had 14 Negro pupils) in the zone of South Jackson (which has been an all Negro school). Defendants, at the hearing, proposed to redraw that line so as to partially correct this situation but their proposal does not completely correct it. We conclude that the south line of the West Jackson zone should extend eastwardly from Poplar along Main to Royal.

The most recent figures show that both Parkview (which has been a predominantly white school with only one Negro pupil) and Washington-Douglas (which has been an all Negro school) are under capacity. The boundary between these unitary zones as approved by the Court places Negro

pupils who live much closer to Parkview in the zone of Washington-Douglas. And while the proof shows that there is considerable new development in the eastern part of the Parkview zone, there is nothing to show that Parkview would be over capacity if its zone is extended westwardly to include these Negro pupils. We conclude that the zone of Parkview should be extended westwardly to include the area bounded by Chester on the south, Royal on the west and College on the north.

The most recent figures show that both Alexander (which has been a predominantly white school but has had 87 Negro pupils) and Lincoln (which has been an all Negro school) are under capacity. The boundary between these unitary zones as approved by the Court follows the I.C.R.R. and G. M. & O. R.R. tracks southwesterly until it reaches Alice and then leaves these tracks and runs west on Alice to Royal and south on Royal to Preston. This means that there are Negro pupils who live much closer to Alexander but who must cross the railroad tracks to Lincoln. It is true that Lincoln has been somewhat more under capacity than Alexander. However, if it should become necessary, defendants could make an adjustment in the bounary between the Alexander zone and the Highland Park zone, the latter school also being under capacity. We conclude that the portion of the Lincoln zone bounded by the railroad tracks on the east, Alice on the north, Royal on the west and Preston on the south should be included in the Alexander zone.

There are three junior high schools in Jackson. Tigrett and Jackson have been all white schools and Merry has been all Negro. Tigrett is located in the western section, Merry is located in the central section and Jackson is located in the eastern section. The zones proposed by the defendants would, generally, allocate the western section

to Tigrett, the central section to Merry, and the eastern section to Jackson. The boundaries follow major streets or highways and railroads. According to the school population maps, there are a considerable number of Negro pupils in the southern part of the Tigrett zone, a considerable number of white pupils in the middle and northern parts of the Merry zone, and a considerable number of Negro pupils in the southern part of the Jackson zone. The location of the three schools in an approximate east-west line makes it inevitable that the three zones divide the city in three parts from north to south. While it appears that proximity of pupils and natural boundaries are not as important in zoning for junior highs as in zoning for elementary schools, it does not appear that Negro pupils will be discriminated against. The only real alternative offered by plaintiffs is to adopt a "feeder" syste mwhereby certain elementary schools would "feed" pupils to a particular junior high, but there is no constitutional requirement that this particular system be adopted. We conclude that the proposed junior high school zones proposed by defendants do not amount to unconstitutional gerrymandering.

Under the plan for gradual desegregation approved by the Court in the summer of 1963, the first three grades were desegregated in the school year 1963-4, the next three grades i n1964-5, and thereafter two additional grades are to be desegregated each succeeding year. Under this plan, the 7th and 8th grades only would be desegregated in the coming year, 1965-6. Plaintiffs moved the Court to amend the plan to require all remaining grades be desegregated in 1965-6, and the Court has allowed them to reopen this question. They contend that "all deliberate speed" requires this action.

Memorandum Decision

In view of the undisputed proof that no substantial administrative problems have so far been met, we conclude plaintiffs are entitled to some acceleration in the plan. More particularly, we conclude that all of the junior high grades (7th, 8th and 9th) should be desegregated in the year 1965-6; and we further conclude that all of the senior high grades (10th, 11th and 12th) should be desegregated in 1966-7.

Plaintiffs also moved the Court to order desegregation of teachers, and the administrative and supporting personnel. At an earlier stage of this proceeding, we held that plaintiffs are entitled to assert a claim for desegregation of teachers and principals, but that they are not entitled to assert a claim for desegregation of other personnel. We took under advisement the claim with respect to teachers and principals pending implementation of the plan, and we ordered struck from the complaint he claim with respect to other personnel. (221 F. Supp. 968, 972) This determination was made on the basis of the clear holding to that effect by our Court of Appeals in *Mapp* v. *Board of Education of Chattanooga,* 319 F.2d 571, 576 (6th Cir. 1963). Accordingly, we have for consideration only the claim for desegregation of teachers and principals.

We first must ascertain the guidelines for determining whether plaintiffs are entitled to desegregation of faculty and principals. We must do this from a very limited number of cases which deal with the problem. As stated, our Court of Appeals held that plaintiffs in such a case as this are entitled to press this claim as part of their claim "to an education free of any consideration of race." It also held that they have no right to assert any constitutional claims the teachers and principals may have. (*Mapp,*

supra.) However, the Court was not specific, saying in part (319 F.2d 571, 576):

> "We agree that the teachers, principals and others are not within the class represented by plaintiffs and that plaintiffs cannot assert or ask protection of some constitutional rights of the teachers and others, not parties to the cause. We, however, read the attack upon the assignment of teachers by race not as seeking to protect rights of such teachers, but as a claim that continued assigning of teaching personnel on a racial basis impairs the students' rights to an education free from any consideration of race.
>
> • • • • •
>
> "... [W]e think it appropriate that the stricken allegations of the complaint, insofar as they relate to the assignment of teachers and principals, be restored to the pleading and that decision of the legal question presented await developments in the progress of the plan approved. Nothing we have said need call for any present taking of testimony on the subject of teacher and principal assignement. Within his discretion, the District Judge may determine when, if at all, it becomes necessary to give consideration to the question under discussion. We affirm, however, the order granting the motion to strike, to the extent that it applies to allegations relating to the hiring and assignment of school personnel other than teachers and principals."

In *Augustus* v. *Board of Public Instruction of Escambia County, Florida,* 306 F.2d 862 (5th Cir. 1962) the Court held, as *Mapp* later held, that it was improper to strike this

claim for relief before the trial on the merits and indicated that at such hearing relief could be granted. In *Board of Public Instruction of Duval County, Florida* v. *Braxton*, 324 F.2d 616 (5th Cir. 1964) the Court held (one judge dissenting) that the trial court was within its proper discretion in ordering a desegregation of faculty in a decree providing for desegregation of pupils. In *Bradley* v. *School Board of Richmond, Virginia*, 345 F.2d 310 (4th Cir. 1965) the Court held that the trial court was within its discretion in denying an application for desegregation of teachers. It pointed out that this issue had been ignored at the trial, and said that the granting of such relief should depend upon a balancing of the need therefor to protect the constitutional rights of the pupils against the effect it would have on the administration of the schools and the efficiency of the staffs. Two judges, dissenting on this question, said at p. 324:

> "The composition of the faculty as well as the composition of its student body determines the character of a school. Indeed, as long as there is a strict separation of the races in faculties, schools will remain 'white' and 'Negro,' making student desegregation more difficult. The standing of the plaintiffs to raise the issue of faculty desegregation is conceded. The question of faculty desegregation was squarely raised in the District Court and should be heard. It should not remain in limbo indefinitely. After a hearing there is a limited discretion as to when and how to enforce the plaintiffs' rights in respect to this, as there is in respect to other issues, since administrative considerations are involved; but the matter should be inquired into promptly. There is no legal reason

why desegregation of faculties and student bodies may not proceed simultaneously."

In one District Court case in Tennessee, *Sloan* v. *Tenth School District of Wilson County, Tennessee,* 9 Race Rel. L. Rep. 1306 (M.D. Tenn. 1964), the Court ordered desegregation of faculties, and we understand that this has been done by consent order in several other cases involving school districts of this state.

We gleam from the foregoing cases that this application for desegregation of faculties and principals largely addresses itself to the discretion of the trial court and that in exercising its discretion the Court should consider the current need for this action in effecting abolition of compulsory segregation of pupils as against any problems involved in taking this step.

The defendants contend that there is no current need to desegregate the faculties and principals and that the teachers might be seriously adverse to such action. Plaintiffs offered some testimony from Negro parents that Negro pupils are reluctant to attend schools in which all of the teachers are white, some because they are afraid that the white teachers would require higher performance and perhaps others because they are afraid that they would not receive fair treatment. These witnesses gave no specific examples. It should be noted, however, that the intervening plaintiffs, at least, are seeking to attend schools with all white faculties. Plaintiffs' education experts largely testified in terms of the educational desirability of mixed faculties, but we do not believe that this is a constitutional consideration. Plaintiffs' sociology expert testified that in his investigation of the question at Nashville he had not turned up much evidence that fear of going to school to

all white teachers is a deterrent, but he also testified that having all Negro teachers stigmatizes a school as a "Negro" school which tends to keep it segregated.

We do not believe that the proof of the plaintiffs is sufficiently strong to entitle them at this time to an order requiring integregation of the faculties and principals. At the same time we do not believe that they are, on this proof, entitled to some relief, and this Court in its discretion may fashion the remedy which it believes to be consistent with the need shown. It is obvious that the defendants have followed a policy of assigning white teachers, simply because of their race, only to schools in which the pupils are all or predominantly white, and of assigning Negro teachers, simply because of their race, only to schools in which the pupils are all Negroes. We believe that this policy should be rescinded, and that a white teacher should not be prohibited, because of his or her race, from teaching in a school in which the pupils are all or predominantly Negro, and that a Negro teacher should not be prohibited, because of his or her race, from teaching in a school in which the pupils are all or predominantly white. This would mean that white and Negro teachers, who so desire, would not be barred, because of their race, from teaching pupils all or a majority of whom were of the other race. But it also would mean that none would be forced to do so and would mean, that, of course, all other usual factors could be considered in determining the assignment of teachers.

Plaintiffs next contend that they are entitled to an order prohibiting all segregation in curricular and extra-curricular activities of desegregated grades. As to curricular activities, we were under the impression that such a provision had been included in the decree heretofore entered,

but for some reason it was omitted. In any event, plaintiffs are entitled to an order providing that, with respect to desegregated grades, segregation is prohibited as to all school facilities, and as to all curricular activities, including athletics.

The question regarding extra-curricular activities is more difficult. Certainly, as to school-sponsored activities, there must be no discrimination based on race by the defendants, and plaintiffs are entitled to an order to that effect. However, we must deal in particular with an incident which has occurred which plaintiffs contend amounted to discrimination in a school-sponsored activity. It seems that the private organization which operates the Jackson Symphony Orchestra invited the pupils in certain grades in those elementary schools in which the pupils are all or predominantly white to attend a concert during school hours. The pupils in the same grades in elementary schools in which the pupils are all Negroes were not invited. Defendants accepted this invitation, and the invited pupils, including those Negro pupils who were in those grades, attended the concert. The proof showed without question that defendants were not motivated by racial considerations in accepting this invitation. We believe that this occurrence does not constitute unconstitutional discrimination. On the contrary, we believe that defendants may in their discretion allow pupils to attend an outside activity, whether it be a concert, a speaker or whatever, so long as defendants are not motivated by racial considerations.

Plaintiffs also seek an order prohibiting segregation of teacher in-service training. Although the proof is not completely clear, it appears that the only such segregation that remains results from the fact that the white teachers and

the Negro teachers are members of separate professional organizations. It appears without dispute that defendants do not control the policies of these organizations. In any event, as heretofore indicated, the *Mapp* case, *supra*, holds that plaintiffs have no standing to assert any constitutional claims that the teachers may have and may assert a claim for teacher desegregation only in support of their constitutional right, as pupils, to an abolition of discrimination based on race. The assertion by plaintiffs that what remains of segregation in teacher in-service training has an effect on their right as pupils is, on the proof in this case, extremely tenuous. We deny this application for relief.

Plaintiffs last contend that defendants should be required to pay their attorneys' fees and to pay expenses incurred by plaintiffs in the employment of certain expert witnesses.

With respect to attorneys' fees, it is incumbent on plaintiffs first to prove a legal liability on their part to pay such fees, that is, plaintiffs must prove an express or implied contract to pay either a fee specific in amount or a reasonable fee. 20 C.J.S., Costs, Sec. 218, p. 453 et seq. The proof here shows that when some of intervening plaintiffs were denied the opportunity to attend the schools to which they had applied, they called on these attorneys to represent them. The attorneys, after interviewing these plaintiffs, forthwith filed the first motion for additional relief and thereafter handled this litigation. While there was some proof that the attorneys might be able to look elsewhere for payment in the event intervening plaintiffs did not pay them, there was certainly an implied contract between these plaintiffs and the attorneys that a reasonable fee would be paid by them.

Memorandum Decision

In *Bell* v. *School Board of Powhatan County, Virginia,* 321 F.2d 494, 500 (4th Cir. 1963), a school desegregation case, the court held that the trial court had abused its discretion in refusing to allow plaintiffs to recover attorneys' fees. In that case the school authorities had been guilty of ". . . a long continued pattern of evasion and obstruction. . . ." In a later school segregation case, the Fourth Circuit affirmed the trial court in its denial of attorneys' fees, but recognized that a fee should be allowed ". . . when it is found that the bringing of an action should have been unnecessary and was compelled by the school board's unreasonable, obdurate obstinacy." *Bradley* v. *School Board of the City of Richmond,* 345 F.2d 310 (4th Cir. 1965).

In this case during the summer of 1964 when intervening plaintiffs applied to attend schools outside of their zones, defendants were, as a matter of course, allowing both white and Negro pupils to do so if they would be in a racial majority. It appears that the applications of plaintiffs were denied by the superintendent because they would be in a minority in the schools they sought to attend. The action by the superintendent in denying their applications was in clear violation of the decree of this court, and it was in clear violation of the constitutional rights of these plaintiffs as had been expressly held by the Supreme Court in *Goss, et al.* v. *Board of Education of the City Knoxville,* 373 U.S. 683 (1963), all of which defendants must have, or certainly should have, known. For this reason, plaintiffs are entitled to recover an attorneys' fee for their handling of this aspect of the litigation. It is no answer to say that these plaintiffs did not seek redress from the action of the superintendent by appealing to the defend-

ant Board members. Defendants do not even contend that the superintendent was not acting with authority; it appears that he was following an adopted plan or policy. Moreover, the proof shows that plaintiffs were not advised that their applications had been denied until the Saturday before the Monday that the school session was to begin.

On the other hand, with respect to the other issues presented by these motions for additional relief, it does not appear that defendants have violated any order of this court or have in any wise acted improperly. We therefore award plaintiffs and attorneys fee of $1,000.00 as costs in this cause.

As stated, plaintiffs also seek to recover as costs the fees and expenses of their expert witnesses. However, these experts did not testify on any issue as to which this court has found defendants in violation of its decree or as to any issue as to which the court has found that defendants have acted in disregard of the constitutional rights of these plaintiffs. Moreover, these experts in large measure gave educational or sociological opinions of no particular constitutional relevance. We therefore deny this application.

In closing this opinion, this court would like to point out that there appears to be little communication between the school authorities and the interested Negro leadership in the community. There certainly should be. As desegregation progresses under this plan, there are bound to be points of difference between the Negro citizens and the school authorities as to rights of the Negroes and the obligations of the authorities. These differences should first be the subject of a conference in an effort to compose them amicably. They should be brought to court only when

the differences cannot so be resolved and are of substantial significance.

An order will be prepared for entry by the parties consistent with the rulings in this opinion.

ENTER this 30th day of July, 1965.

/s/ BAILEY BROWN
United States District Judge

A TRUE COPY.

ATTEST:

W. LLOYD JOHNSON, Clerk.

By A. H. SAWYER, DC

Order of the United States District Court for the Western District of Tennessee

(filed August 11, 1965)

[Caption Omitted]

This cause came on before the Honorable Bailey Brown, District Judge, at a pre-trial conference held May 26, 1965 in the Court's Chambers, whereupon the Court did, upon the statement of facts by defendants' counsel to the Court, declare and decide that the manner of application by the defendants of the transfer provisions is unconstitutional unless the defendants allow a transfer of a student from a school in which said student be in the racial majority to a school, outside of his zone, in which such student would be in a racial minority on the same basis that transfers were allowed to a student from a school in which such student is in the racial minority to a school, outside his zone, in which said student would be in a racial majority. The Court further did find and determine that the remaining issues to be heard by the Court at a later hearing would be as follows:

1. Whether or not the elementary school unitary zones previously approved by the Court, as subsequently amended by defendants, amounted to unconstitutional gerrymandering.

2. Whether or not the junior high school unitary zones proposed by defendants amounted to unconstitutional gerrymandering.

3. Whether or not the Court should order a desegregation of faculty and administrative and supporting personnel, including faculty in-service training, in the City Schools of Jackson.

4. Whether or not the Court should order an acceleration of the plan of desegregation heretofore approved by the Court.

5. Whether or not the defendants had discriminated against the plaintiffs in extra-curricular activities.

6. Whether or not plaintiffs should be awarded an attorneys' fee in this proceeding.

This cause thereupon came on to be heard on the 18th day of June, 1965, and upon a former day of the term, before the Honorable Bailey Brown, District Judge, sitting without intervention of a jury, upon the Motion for Further Relief and to add parties as additional and/or intervening plaintiffs, filed by the plaintiffs on 4 September 1964 against the defendants, Board of Commissioners of the City of Jackson, Tennessee, its board members and C. J. Huckaba, Superintendent of City Schools, a replication filed by said defendants to said motion on or about 11 September 1964, the pretrial order entered by the Court on 28 September 1964 allowing the intervention of additional parties plaintiff and granting and denying certain other preliminary relief having to do with preparation for trial of said motion, the supplemental replication to said motion of September 4, 1964 filed by said defendants on or about 12 November 1964, a petition filed by said defendants on or about 13 November 1964 seeking approval of proposed junior high school unitary zones filed concurrently therewith and also seeking consolidation of the hearing on said petition with the hearing upon plaintiffs' said motion for further relief, plaintiffs' specifications of objections to said junior high school unitary zones filed by defendants and their agreement to consolidation of said hearings, the additional mo-

tion for further relief against said defendants filed by the plaintiffs on or about 19 April 1965, the replication of said defendants to said additional motion for further relief of the plaintiffs, filed on or about 18 May 1965, and the exhibits filed by the respective parties to the foregoing pleadings, the evidence introduced by the parties in open court, arguments of counsel and the entire record upon the issues prescribed by the Court at the May 26, 1965 pre-trial conference, from all of which the Court finds and holds that the plaintiffs are entitled to certain relief upon some of the issues, but that the relief sought by plaintiffs should be denied on other issues, as hereinafter provided, and as more fully stated in the Memorandum Decision filed by the Court on 30 July 1965, which is hereby made a part of the record and is adopted as the Findings of Fact and the Conclusions of Law made by the Court upon the various pleadings set forth hereinabove.

IT IS, THEREFORE, ORDERED, ADJUDGED, DECREED AND ENJOINED by the Court as follows:

1. The assignment and transfer plan or policy in the City of Jackson, Tennessee school system as actually carried out by said defendants deprives plaintiffs of their constitutional rights, and must be amended in the following particulars:

(a) If said defendants continue their policy of allowing white and Negro pupils, as a matter of course, to attend schools outside of their unitary zones where they will be in a racial majority, they must, beginning with the 1965-66 school year, also allow white and Negro pupils to the same extent and under the same terms to attend schools, as a matter of course, outside of their unitary zones where they will be in a racial minority. In addition, those Negro pupils

who have heretofore applied for and been denied the right to attend predominantly white schools outside their unitary zones must be admitted to such schools, at least in the school year 1965-66, if they so desire.

(b) In allowing pupils to attend schools outside their unitary zones irrespective of whether they will be in a racial majority or minority, each pupil must be required each year to register in the school of his unitary zone and apply for a transfer, and shall not be permitted to register directly in the school or schools outside of his or her zone.

(c) All pupils who were not in the school system in 1962-63 shall not have the right, as do pupils who were attending during that year, to continue until graduation in a school outside their zone. All such pupils shall be required each year to register in the school of their respective unitary zones and apply for any transfer, if desired.

2. The unitary zones established by defendants and heretofore approved by this Court for the elementary schools of the City of Jackson, as subsequently amended by defendants, in some areas appear to be gerrymandered and will therefore be revised by defendants in the following particulars:

(a) The south line of the West Jackson School zone shall extend eastwardly from Poplar along Main to Royal.

(b) The zone of Parkview School shall be extended westwardly to include the area bounded by Chester on the south, Royal on the west and College on the north.

(c) That portion of the Lincoln School zone bounded by the railroad tracks on the east, Alice on the north, Royal on the west and Preston on the south shall be included in the Alexander School Zone.

3. The proposed junior high school zones proposed by defendants do not amount to unconstitutional gerrymandering and are approved by the Court.

4. Desegregation in the City of Jackson School System will be accelerated as follows: All of the junior high grades (7th, 8th and 9th) shall be desegregated at the beginning of the school year 1965-66; and all of the senior high grades (10th, 11th and 12th) shall be desegregated at the beginning of the school year 1966-67 so that said school system shall be totally desegregated at the beginning of said latter year.

5. The application of plaintiffs for an order requiring integration of faculty is at this time denied. However, the policy of defendants of assigning white teachers only to schools in which the pupils are all or predominantly white and Negro teachers only to schools in which the pupils are all Negro is by this order rescinded to the extent that white teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly Negro, and Negro teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly white.

To implement this change in policy, defendants must forthwith, as to substitute teachers, and each year beginning with the year 1966-67, as to all teachers, publicize it and obtain from each teacher an indication of willingness or an indication of objection to teaching in a school in which the pupils are all or predominantly of the other race. All teachers who indicate such a willingness will be assigned to schools without consideration of the race of the teacher or the pupils, but all other usual factors may be considered in assigning teachers. Nothing in this order, however, will

be construed as requiring the assignment of an objecting teacher to a school in which the pupils are all or predominantly of the other race or will be construed as requiring a refusal to employ or a dismissal of a teacher who objects to teaching in such a school. This change in policy will be effective as to substitute teachers during the remainder of the school year 1965-66 and as to all teachers beginning with the school year 1966-67.

6. The Court finds that its previous Judgment entered in this cause failed to include an order requiring defendants to eliminate all racial discrimination and segregation in curricular and school sponsored extra-curricular activities in the City of Jackson School System and the Court so orders. However, the Court has not found the defendants guilty of any unconstitutional discrimination in connection herewith.

7. The application of plaintiffs for an order requiring desegregation of administrative and supporting personnel is denied.

8. As to teacher in-service training and professional activities, plaintiffs are denied relief.

9. Plaintiffs are entitled to recover an attorneys' fee for the handling of that aspect of the litigation pertaining to the application of the intervening plaintiffs in the summer of 1964 to transfer to schools outside of their zones and the defendants' denial of said application in clear violation of the constitutional rights of these plaintiffs. In this connection, the Court finds that these services consisted of interviewing of plaintiffs at Jackson on the day before school

was to begin, preparation and filing of motion, attendance by the attorneys at two pre-trial conferences at Memphis, and preparation of order for entry, and that, therefore, a fee of $1,000.00 for said attorneys would be fair and reasonable and is awarded as costs in this action.

10. The application of plaintiffs to recover as costs the fees and expenses of their expert witnesses is denied.

11. Jurisdiction of the case is retained by the Court pending full implementation of desegregation in the City School System of Jackson, Tennessee, and either party may apply.

ENTER this 11th day of August, 1965.

BAILEY BROWN
United States District Judge

A TRUE COPY.

ATTEST:

W. LLOYD JOHNSON, Clerk.

By A. H. SAWYER, DC

Opinion of the United States Court of Appeals For the Sixth Circuit

Nos. 17,118 and 17,119

BRENDA K. MONROE, *et al.*,

Plaintiffs-Appellants,

v.

BOARD OF COMMISSIONERS, CITY OF JACKSON, TENNESSEE, *et al.*, and COUNTY BOARD OF EDUCATION, MADISON COUNTY, TENNESSEE, *et al.*,

Defendants-Appellees.

APPEAL FROM THE U. S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE

Decided July 21, 1967

Before: O'SULLIVAN, PHILLIPS and PECK, Circuit Judges.

O'SULLIVAN, Circuit Judge. In 1963 a suit was filed by Brenda K. Monroe and others, Negro children and their parents, to bring about the desegregation of the public schools of the City of Jackson, and of Madison County, Tennessee.[1]

The District Court required the school authorities to submit plans to accomplish desegregation and ultimately granted the relief sought by approving parts of a submitted plan and ordering other steps to be taken. Separate opin-

[1] The City of Jackson is located in Madison County and the respective school authorities are the Board of Commissioners of the City of Jackson and the County Board of Education of Madison County.

ions were written, one involving the City of Jackson schools, reported as *Monroe* v. *Board of Commissioners of the City of Jackson, Tennessee, et al.*, 221 F. Supp. 968 (W.D. Tenn. E.D. 1963) and the other relating to Madison County schools, reported in *Monroe* v. *Board of Commissioners, etc., et al.*, 229 F. Supp. 580 (W.D. Tenn. E.D. 1964). Appeals to this Court from these cases were dismissed by agreement. Obedient to the above decisions, all grades of the schools involved have been desegregated.

The litigation with which we now deal arises from Motions for Further Relief filed in the District Court by plaintiffs. By these motions, plaintiffs sought to accomplish greater integration of the school children, desegregation of the teaching staffs, and the enjoining of described practices of the school authorities which were alleged to be violative of the District Judge's original decrees and contrary to new developments in the law. The District Judge, again, dealt separately with the city and the county schools in disposing of the Motions for Further Relief. His decision as to the city schools is reported in *Monroe* v. *Board of Commissioners, City of Jackson*, 244 F. Supp. 353 (W.D. Tenn. E.D. July 30, 1965) and as to the County Schools in *Monroe* v. *Board of Education, Madison County, Tennessee, et al.*, —— F. Supp. —— (W.D. Tenn. E.D. August 2, 1965). These are the cases before us on this appeal; the plaintiffs are the appellants. These opinions, with the earlier ones reported at 221 F. Supp. 968 and 229 F. Supp. 580, *supra*, set out the facts and we will restate them only where needed to discuss the present contentions of the plaintiffs-appellants.

Opinion of the United States Court of Appeals For the Sixth Circuit

1) ***Compulsory integration.***

Appellants argue that the courts must now, by reconsidering the implications of the *Brown* v. *Board of Education* decisions in 347 U.S. 483 (1954) and 349 U.S. 294 (1955), and upon their own evaluation of the commands of the Fourteenth Amendment, require school authorities to take affirmative steps to eradicate that racial imbalance in their schools which is the product of the residential pattern of the Negro and white neighborhoods. The District Judge's opinion discusses pertinent authorities and concludes that the Fourteenth Amendment did not command compulsory integration of all of the schools regardless of an honestly composed unitary neighborhood system and a freedom of choice plan. We agree with his conclusion. We have so recently expressed our like view in *Tina Deal, et al.* v. *The Cincinnati Board of Education,* 369 F(2) 55 (CA 6, 1966), petition for cert. filed, 35 LW 3394 (U.S. May 5, 1967) (No. 1358), that we will not here repeat Chief Judge Weick's careful exposition of the relevant law of this and other circuits. He concluded "We read *Brown* as prohibiting only enforced segregation." 369 F(2) at 60. We are at once aware that we were there dealing with the Cincinnati schools which had been desegregated long before *Brown,* whereas we consider here Tennessee schools desegregated only after and in obedience to *Brown.* We are not persuaded, however, that we should devise a mathematical rule that will impose a differeht and more stringent duty upon states which, prior to *Brown,* maintained a de jure biracial school system, than upon those in which the racial imbalance in its schools has come about from so-called de facto segregation—this to

be true even though the current problem be the same in each state.

We are asked to follow *United States* v. *Jefferson County Board of Education*, 372 F(2) 836 (CA 5, 1966), which seems to hold that the pre-*Brown* biracial states must obey a different rule than those which desegregated earlier or never did segregate. This decision decrees a dramatic writ calling for mandatory and immediate integration. In so doing, it distinguished *Bell* v. *School City of Gary, Indiana*, 324 F(2) 209 (CA 7, 1963), *cert. den.* 377 U.S. 924, on the ground that no pre-*Brown* de jure segregation had existed in the City of Gary, Indiana. 372 F(2) at 873. It would probably find like distinction in our *Tina Deal* decision because of *Cincinnati's* long ago desegregation of its schools. We, however, have applied the rule of *Tina Deal* to the schools of Tennessee. In *Mapp* v. *Board of Education*, 373 F(2) 75, 78 (CA 6, 1967) Judge Weick said,

> "To the extent that plaintiffs' contention is based on the assumption that the School Board is under a constitutional duty to balance the races in the school system in conformity with some mathematical formula, it is in conflict with our recent decision in *Deal* v. *Cincinnati Board of Education*, 369 F(2) 55 (6th Cir. 1966)."

However ugly and evil the biracial school systems appear in contemporary thinking, they were, as *Jefferson, supra,* concedes, de jure and were once found lawful in *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), and such was the law for 58 years thereafter. To apply a disparate rule because these early systems are now forbidden by *Brown* would be in the

nature of imposing a judicial Bill of Attainder. Such proscriptions are forbidden to the legislatures of the states and the nation—U.S. Const. Art. I, Section 9, Clause 3 and Section 10, Clause 1. Neither, in our view, would such decrees comport with our current views of equal treatment before the law.

This is not to say that Tennessee school authorities can dishonestly construct or deliberately contrive a system for the purpose of perpetuating a "maximum amount" of its pre-*Brown* segregation. *Northcross* v. *Board of Education of City of Memphis*, 33 F(2) 661, 664 (CA 6, 1964). But to the extent that *United States* v. *Jefferson County Board of Education*, and the decisions reviewed therein, are factually analogous and express a rule of law contrary to our view herein and in *Deal*, we respectfully decline to follow them.

2) *Gerrymandering.*

Appellants assert that while giving surface obedience to the establishment of a unitary zoning system and freedom of choice, the school officials of the City of Jackson had been guilty of "gerrymandering", in order "to preserve a maximum amount of segregation." Were this true, it would be violative of the law. *Northcross* v. *Board of Education of City of Memphis*, 302 F(2) 818, 823, (CA 6, 1962), *cert. den.* 370 U.S. 944, and *Northcross* v. *Board of Education of City of Memphis*, 333 F(2) 661, 664 (CA 6, 1964). The District Judge in the instant matter did hold that as to some boundary lines "there appears to be gerrymandering." *Monroe* v. *Board of Commissioners, City of Jackson, supra*, 244 F. Supp. at 361. As to these instances, he ordered changes in the school zone lines. *Id.* at 361, 362. But, as to the junior high schools, he concluded,

"that the proposed junior high school zones proposed by defendants do not amount to gerrymandering." 244 F. Supp. at 362.

Without making our own recitation of the relevant evidence, we express our agreement with the District Judge.

3) ***Faculty desegregation.***

In the accomplishment of desegregation in the involved schools, there remain some that are attended only by Negro and others only by white children. The teaching staff conforms substantially to this pattern—all Negro teachers in the all Negro schools and all white teachers in the all white schools. Little attention was paid to the teaching staff in the early desegregation cases. *Brown* v. *Board of Education, supra*, did not speak on it, nor did the early relevant decisions from this circuit. In *Mapp* v. *Board of Education of Chattanooga*, 319 F(2) 571, 576 (CA 6, 1963), however, we ordered restored to the complaint there involved allegations and prayers for relief relating to assignment of teachers and principals, but ordered also that "decision of the legal question presented await development of the progress of the plan approved." 319 F(2) at 576. And we further concluded that "within his discretion, the District Judge may determine when, if at all, it becomes necessary to give consideration to the question. . . ." *Ibid.*

This leisurely postponement of consideration of faculty desegregation appealed to the Fourth Circuit, when in *Bradley* v. *School Board of City of Richmond, Virginia*, 345 F(2) 310, 320, 321 (CA 4, 1965), it said:

"The possible relation of a reassignment of teachers to protection of the constitutional rights of pupils need

not be determined when it is speculative. When all direct discrimination in the assignment of pupils has been eliminated, assignment of teachers may be expected to follow the racial patterns established in the schools. An earlier judicial requirement of general reassignment of all teaching and administrative personnel need not be considered until the possible detrimental effects of such an order upon the administration of the schools and the efficiency of their staffs can be appraised along with the need for such an order in aid of protection of the constitutional rights of pupils."

But the Supreme Court declared this would not do, and in *Bradley* v. *School Board*, 382 U.S. 103 (1965), remanded the case to require the Richmond School Board to proceed with study and resolution of the faculty integration question, stating,

"There is no merit to the suggestion that the relation between faculty allocation on an alleged racial basis and the adequacy of the desegration plans is entirely speculative." 382 U.S. at 105.

The *Bradley* opinion was followed by *Rogers* v. *Paul, et al*, 382 U.S. 198 (1965); once again the Supreme Court remanded the cause for consideration of the faculty desegregation problem.

The District Judge in the matter now before us did hear some evidence on the question of faculty desegregation and concluded,

"We do not believe that the proof of the plaintiffs is sufficiently strong to entitle them to an order requiring,

integration of the faculties and principals." 233 F. Supp. at 364.

He did, however, attack a then current policy of the school authorities whereby white teachers and Negro teachers, "simply because of their race," were respectively assigned only to schools whose pupils were all or predominantly of that teacher's race. The order implementing his decision contained the following:

"The application of plaintiffs for an order requiring integration of faculty is at this time denied. However, the policy of defendants of assigning white teachers only to schools in which the pupils are all or predominantly white and Negro teachers only to schools in which the pupils are all Negro is by this order rescinded to the extent that white teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly Negro, and Negro teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly white.

To implement this change in policy, defendants must forthwith, as to substitute teachers, and each year beginning with the year 1966-67, as to all teachers, publicize it and obtain from each teacher an indication of willingness or an indication of objection to teaching in a school in which the pupils are all or predominantly of the other race. All teachers who indicate such a willingness will be assigned to schools without consideration of the race of the teacher or the pupils, but all other usual factors may be considered in assigning

teachers. Nothing in this order, however, will be construed as requiring the assignment of an objecting teacher to a school in which the pupils are all or predominantly of the other race or will be construed as requiring a refusal to employ or a dismissal of a teacher who objects to teaching in such a school. This change in policy will be effective as to substitute teachers during the remainder of the school year 1965-66 and as to all teachers beginning with the school year 1966-67."

We note that this order was handed down before *Bradley* v. *School Bd., supra,* and we are constrained to hold that it does not commit or require the school authorities to adopt an adequate program of faculty desegregation which will pass muster under the implied command of the *Bradley* case. Whatever *Bradley's* clear language, we cannot read it otherwise than as forbidding laissez faire handling of faculty desegregation. It implies that the accomplishment of that goal cannot be left to the free choice of the teachers and that the Board must exercise its authority in making faculty assignments so as to assist in bringing to fruition the predicted benefits of school desegregation.

No Supreme Court decision, however, has as yet provided a blue print that will achieve faculty desegregation. The United States Office of Education has indicated that, in some affirmative way, school boards must act to correct past discriminatory practices in the assignment of teachers.[2] But its recommendations do not have the force of

[2] "§181.13 Faculty and Staff

(a) *Desegregation of Staff.* The racial composition of the professional staff of a school system, and of the schools in the system, must be considered in determining whether students are subjected to discrimination in educational programs. Each school system is responsible for correcting

law; neither does it provide clear guidelines to make easy the job of school boards in dealing with this problem. It will be difficult to eliminate the forcing of people into places and positions because of race and at the same time compulsorily assign a school teacher on the basis of his or her race.

It is sufficient for us to say now that the formula announced by the District Judge, leaving the decision of integration of the faculties to the voluntary choice of the

---

the effects of all past discriminatory practices in the assignment of teachers and other professional staff.

(b) *New assignments.* Race, color, or national origin may not be a factor in the hiring or assignment to schools or within schools of teachers and other professional staff, including student teachers and staff serving two or more schools, except to correct the effects of past discriminatory assignments.

• • •

(d) *Past assignments.* The pattern of assignment of teachers and other professional staff among the various schools of a system may not be such that schools are identifiable as intended for students of a particular race, color, or national origin, or such that teachers or other professional staff of a particular race are concentrated in those schools where all, or the majority, of the students are of that race. Each school system has a positive duty to make staff assignments and reassignments necessary to eliminate past discriminatory assignment patterns. Staff desegregation for the 1966-67 school year must include significant progress beyond what was accomplished for the 1965-66 school year in the desegregation of teachers assigned to schools on a regular full-time basis. Patterns of staff assignment to initiate staff desegregation might include, for example: (1) Some desegregation of professional staff in each school in the system, (2) the assignment of a significant portion of the professional staff of each race to particular schools in the system where their race is a minority and where special staff training programs are established to help with the process of staff desegregation, (3) the assignment of a significant portion of the staff on a desegregated basis to those schools in which the student body is desegregated, (4) the reassignment of the staff, of schools being closed to other schools in the system where their race is a minority, or (5) an alternative pattern of assignment which will make comparable progress in bringing about staff desegregation successfully."

teachers, does not obey current judicial commands. We, therefore, remand this phase of the litigation to the District Judge to reconsider upon a further evidentiary hearing the matter of faculty desegregation.

4) *Desegregation of Teachers Organisations.*

It appears that at the time of the hearing in the District Court there existed in Tennessee two voluntary organizations, the Tennessee Education Association, whose membership was confined to white teachers, and the Tennessee Education Congress, made up of Negro teachers. Traditionally, the School Board allowed separate holidays to permit the members of these organizations to attend so-called "teacher in-training" programs. The District Judge dealt with this subject as follows:

> "Plaintiffs also seek an order prohibiting segregation of teacher in-service training. Although the proof is not completely clear, it appears that the only such segregation that remains results from the fact that the white teachers and the Negro teachers are members of separate professional organizations. It appears without dispute that defendants do not control the policies of these organizations. In any event, as heretofore indicated, the Mapp case, supra, holds that plaintiffs have no standing to assert any constitutional claims that the teachers may have and may assert a claim for teacher desegregation only in support of their constitutional right, as pupils, to an abolition of discrimination based on race. The assertion by plaintiffs that what remains of segregation in teacher in-service training has an effect on their right as pupils is, on the proof in this

case extremely tenuous. We deny this application for relief." 244 F. Supp. at 365.

The evidence on this subject is too meager to permit us to evaluate the extent to which the school authorities participated in or aided the activities of these separate teacher organizations, and the degree to which membership by the teachers in them would, in turn, affect the rights of the pupils. It appears, however, that these in-service training programs for teachers are conducted pursuant to state law, and are financed with public funds.[3] We make clear that the plaintiff pupils do have standing to assert that the existence of separate teacher organizations based on race and the school authorities' cooperation with their separated activities such as the in-training program "impairs the students' rights to an education free from any consideration of race." *Mapp* v. *Board, supra,* 319 F(2) at 576. If the District Judge's above quoted language can be read as a contrary holding, it is error. We also remand this issue to the District Judge for further consideration.

5) ***The Jackson Symphony Orchestra.***

It appeared that the Jackson Symphony Association, with permission of the school authorities, arranged for a program by the Jackson Symphony Orchestra at one of the Jackson schools. The ladies in charge of this event invited the children in several grades of the Jackson City Schools, the County schools, and the Catholic schools. Those students included some from the all-white schools, and some from the schools, public and parochial, containing both

[3] See e.g., Chap. 76 Tenn. Public Acts, 1965, Sec. 24.

Negro and white students. Students in all-Negro schools were not invited for the two performances involved. Testimony by one of the ladies of the Symphony Association denied any discriminatory motivation in the selection of the pupils, suggesting that the capacity of the auditorium was exhausted by those invited and in attendance. She said,

> "If we had room, we would have had every child in town there—fourth, fifth and sixth grades of every school, but we didn't have room."

The school authorities had nothing to do with the matter of who was to be chosen to attend the concert. Its only participation was to allow the use of the auditorium. While it would be impermissible for school authorities to allow use of school facilities for entertainment that was discriminatory, nothing was developed by the evidence to cause us to criticize the District Judge's conclusion that the "defendants were not motivated by racial considerations" in their handling of this matter. *Monroe* v. *Board of Commissioners, supra,* 244 F. Supp. at 365.

Another issue discussed by the District Judge, —— F. Supp. at ——, the so-called "split season," has been rendered moot by the elimination of the practice.

The cause is remanded to the District Judge for further consideration of the matter of faculty desegregation and teacher in-service training, and is otherwise affirmed.

Judgment of the United States Court of Appeals for the Sixth Circuit

(filed July 21, 1967)

No. 17,118

BRENDA KAY MONROE, *et al.*,

Plaintiffs-Appellants,

—vs.—

BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE, ITS BOARD MEMBERS, and C. J. HUCKABA, SUPERINTENDENT OF CITY SCHOOLS,

Defendants-Appellees.

Before:

O'SULLIVAN, PHILLIPS and PECK,

Circuit Judges.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee.

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that this cause be and the same is hereby remanded to the District Judge for further consideration of the matter of faculty desegregation and teacher in-service training, and is otherwise affirmed.

No costs on appeal awarded either party.

Entered by order of the Court.

/s/ CARL W. REUSS
Clerk

A True Copy.

Order of the United States Supreme Court Granting Petition for Writ of Certiorari

(filed January 15, 1968)

No. 740, *Monroe, et al.* v. *Bd. of Comm'rs of City of Jackson, Tenn., et al.*

The petition for a writ of certiorari is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 695.